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WHEN ATTORNEYS' FEES MAY BE ADDED TO THE ACTUAL DAMAGES.

The law is made for the purpose of commanding what is right and prohibiting what is wrong, and while in ordinary cases attorneys' fees are not added as a part of the damages, there are cases where upon principle they ought to be so assessed. The general rule might be stated as follows: Whenever the act complained of is one which is the result of or essential to a deliberate or willful intention to commit wrongful act, and damage follows, the injured party ought, in reason, to be fully compensated for the whole wrong, including all the expense and trouble to which the injured party has been compelled to submit. In short, in all cases where exemplary damages are allowable, the expenses of the suit, including attorneys' fees, should be added. This rule seems to be well settled in Connecticut. Wynne v. Parsons, 57 Conn. 73 (1884), 17 Atl. Rep. 362; Welsh v. Durand (1869), 36 Conn. 182,4 Am. Rep. 55. In Ohio it is held that in assessing exemplary damages the expenses of litigation may be taken into consideration. Roberts v. Mason (1859), 10 Ohio St. 277; Peckham Iron Co. v. Harper, 41 Ohio St. 100. In Kansas the rule is, that where vindictive damages are recoverable, the jury in estimating them may properly consider the probable and reasonable expenses of litigation, although there is no testimony as to the amount thereof. Titus v. Corkins, 21 Kan. 722. See also Winstead v. Hume, 32 Kan. 568, 4 Pac. Rep. 994; Don v. Julien, 4 Pac. Rep. 1000; Cent. Digest, Vol. 15, Damages, Sec. 219. In Georgia under the Code, Sec. 2942, the jury may allow expenses of litigation, as part of the damages, where the defendant has acted in bad faith, or has been stubbornly litigous, or has caused plaintiff unnecessary trouble and expense. Guernsey v. Shellman, 59 Ga. 797. There are of course other circumstances where attorneys' fees may be allowed, as where there are breaches of covenants for title and in covenants relating to quiet enjoyment in leases, and where by statute they are specifically specified, such as injunction cases where injunction is dissolved. And while the statutes do not expressly provide for attorneys' fees in case an injunction is made permanent, it is impossible to see any good reason why the party committing the wrong should not be held to respond in damages for attorneys' fees, particularly if the matter which caused the wrong, resulting in the necessity of an application for the injunction, is guilty of an aggressive tort or any wanton or willful act intended to injure the aggrieved party. In the case of First Nat. Bank of Hutchinson v. Williams, 62 Kan. 431, 63 Pac. Rep. 744, counsel fees and expenses of the particular suit to recover actual damages from a wrongdoer are allowed where the defendant has been guilty of fraud, malice, or oppression. They are purely exemplary and are to be considered only in cases where substantial, actual damages are recoverable. Attorneys' fees and expenses in the present action of the bank against Williams are not sued for or claimed. The expenses paid by the bank were incurred before the action commenced. They were necessary and arose solely as the result of the fraud of the defendant below. To hold that the petition sets out a claim for damages not compensatory, and of a nature which only can be allowed as a punishment to the defendant, would be to remove from the category of actual and exact damages a loss resulting directly from the fraudulent conduct of a party and place it in a class where it might or might not be recovered by one who sustained it, according to the uncertain notion of a jury, whether the wrongdoer ought or ought not to be punished for his acts. In an action for damages by malicious arrest and prosecution the counsel fees and expenses of the party arrested incident to his preliminary examination and necessary to secure his release, if charged with felony, may be recovered on the principle that they are compensatory; but expenses and counsel fees attendant upon the particular action brought to recover for particular injuries growing out of such arrest can be awarded only as punishment to the defendant and are not compensatory in character. Their allowance rests in the discretion of the jury. The damages sought to be recovered in the case at bar may be likened to the expenses of a supposed case incurred by the party ma-

liciously prosecuted in obtaining his discharge from arrest at the preliminary examination. They are compensatory and a right to recover being established, the jury cannot in their discretion refuse to include the amount in their verdict in favor of the party wronged.

NOTES OF IMPORTANT DECISIONS.

REAL ESTATE AGENT PURCHASING OF PRINCIPAL HAVING ALREADY ARRANGED TO SELL TO THIRD PARTY.—In the case of Kingsley v. Wheeler (Minn.), 104 N. W. Rep. 543, an interesting point is decided. An action was brought by the plaintiff and respondent to recover from the defendants and appellants profits alleged to have been made by the defendants in the sale of a certain tract of land, under the claim by the plaintiff that at the time of the sale the defendants were her agents. The jury returned a verdict for plaintiff in the sum of $600. The court says: "An examination of the evidence shows, among other things, that plaintiff bought the land, as defendants knew, for speculative purposes, in the hope, based in some measure upon defendants' statements, that it would increase rapidly in value. She had no agents other than the defendants for the sale of that land. She entered into an arrangement with them for a division of the crops. She became discouraged as to her venture, and defendants encouraged her despondency until she was willing to sell at a small increase over the price for which she had bought. A series of letters concerning the land itself, crops, and its sale by defendants were exchanged. There is room for much legitimate controversy as to whether or not these letters, including one proved by parol, amounted to a listing of the lands for sale by defendants. Construing the testimony as a whole, we are of opinion that the jury was justified in finding that the defendants were the agents of plaintiff for the sale of the land.

Defendants further contend that, if they were appointed the agents of the plaintiff, that relationship was revoked by her letter of August 27th, in which she says: 'In regard to advance on that land, think it safer to wait a little and see what the crop will amount to.' This letter did not operate as a revocation; on the contrary, it is consistent with the theory that the defendants had the land for sale for the plaintiff.

The principles of law applicable to this state of facts are as simple as they are well settled. This court has repeatedly emphasized the principle that real estate agents enjoy no exemption from the ordinary rules which govern the relationship of principal and agent. An agent owes a high degree of faithfulness for the protection and advancement of the interest of his principal. He must act solely for that interest, and not for his own or another's benefit; and must not, and is not allowed to, put himself in a position of conflicting interest with his principal. The principal has a right to repose confidence in the most perfect good faith of his agent, and to rely upon his consistent loyalty. The agent is not entitled to enjoy the fruits of any abuse of his position, or failure in consistent performance of legal duties. An agent to sell land does not fulfill the measure of legal requirements by merely carrying out his specific instructions. He owes the duty of making a full, fair, and prompt disclosure of all facts affecting the principal's rights or interests, or pertaining to the sale of land by him. He is denied the right to profit at the expense of his principal by concealment of fact which he ought to have revealed. Whatever advantage accrues to him by violation of his duties he must make good to his principal whom he has wronged. Tiffany on Agency, 414; Holmes v. Catheart, 88 Minn. 213, 92 N. W. Rep. 956, 60 L. R. A. 734, 97 Am. St. Rep. 513; Merriam v. Johnson, 86 Minn. 61, 90 N. W. Rep. 116; Hegenmyer v. Marks, 37 Minn. 6, 32 N. W. Rep. 785, 5 Am. St. Rep. 808; Smitz v. Leopold, 61 Minn. 456, 53 N. W. Rep. 719; Donnelly v. Cunningham, 58 Minn. 376, 59 N. W. Rep. 1052; Snell v. Goodlander, 90 Minn. 533, 97 N. W. Rep. 421.

The defendants in this case rendered themselves liable in damages by their failure to inform their principal of their opportunity of their contract to sell. If defendants sold the land at an advanced price to a man of straw, and then through him to the real vendee, they would have been held responsible for their profit. Their direct purchase put them in a position of immediate conflict of interest; their concealment from the principal of the sale at a substantial advance clearly made it equally repugnant to a sense of justice and to the rules of law. In Tilleny v. Wolverton, 54 Minn. 75, 55 N. W. Rep. 822, Mr. Justice Mitchell says: 'The important and material fact for her to know was that her agent was interested as purchaser in the proposed sale of her property, and therefore that his interests did or might conflict with hers. If, with knowledge of this fact, she saw fit to approve of the sale, deliver her deed, and accept the purchase money, without inquiry as to the extent of his interest or as to he details of the arrangement between him and the other purchasers, she must be deemed to have deliberately ratified upon the knowledge she had, without caring more.' In that case, however, the sale was made to the agent and others on June 9, 1886, and the sale at an advanced price to a purchaser from these vendors was made April 17, 1887. In the case at bar the jury was justified in finding that the purchaser was found and contract of sale executed before the land was bought back from the plaintiff."

DIVORCE—DUTY TO EFFECT RECONCILIATION. WHEN.—In the case of Edwards v. Edwards, 61 Atl. Rep. 531, the Chancery Division of the Su-

preme Court of New Jersey, rendered the following interesting opinion:

The master, to whom this undefended divorce case was referred, has reported that the proofs before him establish a wilful desertion of petitioner by defendant on July 29, 1901. I am unable to discover sufficient evidence to support that conclusion. On July 29, 1901, the defendant left the house in which she and her husband had been living, and thereafter did not return. When she left, her husband was absent. In his testimony, he admits that his wife and he had a quarrel on the night preceding that day; but he claims that they had been reconciled. If the wife's conduct in leaving indicates an intent to desert, the case of the petitioner will be made out. Her intent at the time is indicated in two modes: (1) By the testimony of a neighbor, who came to her house while she was preparing to leave, and to whom she stated that she was intending to leave; and (2) by a letter which defendant sat down and wrote to her husband in the presence of the neighbor. This letter is more persuasive evidence than that elicited from the person present. I find it impossible to read it and resist the conviction that its writer did not intend to break up her home and life by removing from her husband's house. In it she declares that her husband loves his mother better than he loves her, and plainly indicates that there had been a serious quarrel between them, evidently respecting some difficulty with his mother. She says, "I do not like black looks as I have been getting, and you would not do it if you did not want me to go;" and a fair inference is that in this, and perhaps in previous quarrels, his conduct was such that she assumed that he desired her to leave him. At all events, after signing herself thus, "I am as very (ever) your true and loving wife," she adds, "Now, Ed, go and have a good time, as I will stay at home; but if you want to see me, you can."

From the tone of this letter, I think it clear, under the doctrine of our cases, that it was the duty of the husband to seek and urge a reconciliation with his wife, who thus left him holding out a hope that, if he came to see her, matters might be mended. Petitioner did not perform this duty, but on the 2d of August published in the local newspaper a notice that his wife had left him, and forbidding any one to trust her on his account. On the 3d of August, defendant procured the insertion in the same newspaper, below the notice of her husband, of a paragraph stating that she had just cause for leaving him, and "if he wants the world to know the reason, I will publish it, if needed." The petitioner produces no evidence of any immediate or early attempt at reconciliation. He states in his deposition that he sent friends to her, but he does not disclose the names of the friends or produce them as witnesses. That evidence is wholly unavailing to establish his performance of his duty.

On the 21st of September, 1901, petitioner received a letter from a lawyer, threatening him with proceedings if he continued to "slur" his wife. Thereafter the petitioner did nothing to procure a reconciliation with his wife until a period within a year prior to the filing of his petition. He then called upon the mother of the defendant, taking with him a friend, and demanding from the mother an interview with his wife, or a reply to his request that she would live with him. This call was repeated, but during that period the defendant was away from home, engaged in the occupation of a nurse. Thereafter a letter without date, the envelope of which is postmarked November 29, 1904, was received from defendant, in which she wrote him that she had heard that he was inquiring for her and wanted to have a talk with her in regard to living together again. She excused herself for not meeting him, on account of her being compelled by her work as a nurse to leave her mother's house, where she had been making a visit and had learned of his wish. She then added: "If you should care to write, direct to mamma. She will forward it to me, and I will answer when I write her my address." Petitioner did not avail himself of this opportunity held out by the wife. What further he did he does not disclose; but he produces a letter without date, the envelope of which is postmarked January 19, 1905, in which his wife stated that she had heard that he wished a decided answer whether she would live with him or not, and she adds, "I never intend to live with you again." This letter is proof of a desertion that is willful, but I fail to find that prior to that letter a reconciliation might not have been effected, if the husband had done his duty in seeking it. But this leaves the petitioner unsuccessful, because the desertion thus proved has not continued for the statutory period.

AN ATTORNEY DISBARRED REINSTATED UNDER WHAT CIRCUMSTANCES.—In *Re* Burris, 81 Pac. Rep. 1077, the following opinion was rendered by the Supreme Court of California: "This is a petition for the modification of an order of disbarment heretofore entered against the petitioner. The order was made more than 10 years ago upon a charge of professional misconduct involving no criminality and no serious wrong to any one, though inexcusable in itself. Since that time, as we learn from the testimonials accompanying the petition, the petitioner has been living a life of probity, industry, and sobriety. These testimonials are signed by a number of judges of the superior court, and by many prominent attorneys of the counties where the petitioner was engaged in practice prior to the order of disbarment. His restoration to the bar is also recommended by the judge in whose court the matter was pending out of which the charge of misconduct arose. In view of this strong testimony in his favor, we are of the opinion that the petitioner is entitled to the modification which he asks.

It is therefore ordered that the said John F. Burris be, and he is hereby, restored as an attorney and counselor of this court, and that his name be reinstated upon the roll of attorneys thereof."

LORD TENTERDEN'S ACT IN THE UNITED STATES, AND AN IMPORTANT OMISSION THEREFROM.

The provision of the statute of frauds, that no action shall be maintained "tc charge any person, upon any special promise, to answer for the debt, default, or miscarriage of another," unless the promise be in writing, was held in the case of Pasley v. Freeman,[1] decided in 1789, not to apply to false and deceitful representations as to the credit or solvency of third persons. This case held that an action would lie against a defendant who orally made a false affirmation, or told a he, respecting the credit of a third person, with intent to deceive, by which the third person suffered damage. The doctrine of the case commends itself as a firm stand taken by the courts against actual frauds, but it came dangerously near to an invasion of the statute intended to prevent them. To remedy this, parliament, in the year 1828, enacted what is commonly known as Lord Tenterden's Act, providing that "No action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade, or dealings of any other person, to the intent that such other person may obtain credit, money or goods upon credit, unless such representation be in writing, signed by the party to be charged therewith."[2] The object of the statute was to put representations in mercantile cases upon the same footing with guarantees. This statute has been widely adopted in this country. In 1834 the state of Massachusetts enacted a similar law,[3] worded as follows: "No action shall be maintained to charge any person by reason of any representation or assurance made concerning the character, conduct, credit, ability, trade or dealings of any other person, to the intent or purpose that such person may obtain credit, money or goods thereupon, unless such representation or assurance be made in writing and signed by the party to be charged thereby." Two years later, in 1836, the Massachusetts statutes were revised and the words "to the intent or purpose that such person may obtain credit, money or goods thereupon" were omitted.[4] Concerning this omission, the Supreme Court of Massachusetts said in Medbury v. Watson:[5] "The 3rd section of ch. 74 of the revised statutes varies from it (the original enactment) in this respect, by omitting the words 'to the intent or purpose that such person may obtain credit, money or goods thereupon.' * * * The motive for leaving out the clause contained in the statute of 1834 is not obvious; and as no reason for doing it is assigned by the learned commissioners, in their report, we presume they considered the clause superfluous, and therefore omitted it. We are of opinion that both sections are to receive the same construction, and consequently that a fraudulent representation, not affecting the title of a third person to credit, is not within the statute, and need not therefore be in writing." In a recent case[6] the Supreme Court of Massachusetts affirmed this construction of the statute. The interesting and peculiar feature of the situation is this: Many of the states of the union, which have adopted a similar provision, have copied it from the Massachusetts statute, evidently from the revision of 1836, instead of from the original enactment of 1834, and have likewise omitted the clause "to the intent," etc.

It is a well recognized canon of construction that where a particular statute has been adopted in one state from the statutes of another, after a judicial construction has been given it in such last mentioned state, it is but just to regard the construction as having been adopted, as well as the words.[7] In fact, it was said in Coulter v. Stafford,[8] concerning a statute of the state of Washington, which was substantially a copy of one from Wisconsin, that "in adopting a statute of Wisconsin after it had been construed by the decisions of the highest court of that state, it must be conclusively presumed that the legislature intended to adopt the decisions expounding it as well as the letter of the law." The statute in question, as copied in the revision of 1836, was first construed by the

[1] 3 T. R. 51.
[2] 9 Geo. IV, ch. 14, § 4.
[3] Acts 1834, ch. 182, § 5.
[4] Mass. R. S. 1836, p. 472, ch. 74, § 3.
[5] 47 Mass. (6 Metc.) 246.
[6] Stannard v. Kingsbury, 179 Mass. 174.
[7] Cooley, Const. Lim. (6th Ed.) 66; McDonald v Hovey, 110 U. S. 619, 628.
[8] 48 Fed. Rep. 266, 270.

courts of Massachusetts in September, 1843, in the case of Medbury v. Watson, *supra*. It would seem reasonable that those states which have enacted the statute since that date should be bound by the decision of this case, under the rule of construction just referred to.[9] But there were several states which adopted this statute from Massachusetts before its construction, and it presents a nice question whether the subsequent construction should be followed in these states. It was held in Myers v. McGavock[10] that "the rule that when one state adopts the statutes of another that it thereby adopts the construction placed on such statute by the highest court of the state from which it is taken, has no application when such construction is not placed on the statute until after its adoption," and the Nebraska court refused to adopt the subsequent construction in Wisconsin, principally, however, on the ground that Wisconsin had since overruled its own construction of the statute. This case was hardly intended to stand for the doctrine that when a state copies a statute from another it cannot adopt the construction subsequent to such adoption, should that construction seem the better one. It was said by the Supreme Court of the United States in Hardenbergh v. Ray,[11] in which case a statute of Missouri had been adopted in Oregon, that "the construction which the Supreme Court of the state of Missouri has thus given to its statute since its first adoption thereof does not have the same controlling effect it would have if the decisions had been rendered before such adoption, still, they are strongly persuasive of the proper interpretation of the act, and have been so regarded by the courts of Oregon, which have clearly indicated that the statute of wills of that state should receive the same construction which has been placed thereon by the Missouri decisions." While the construction of the original statute after its adoption in another state is by no means binding on the latter, yet if it be reasonable and just it will be given due credence. The states which adopted the statute under consideration prior to its judicial construction are Michigan, Vermont, Maine and Indiana.[12] The state of Maine has construed this statute, with the clause "to the intent," etc., omitted, in Hunter v. Randal,[13] following the Massachusetts construction, and holding that "the statute was evidently intended to bar only actions for verbal representations, made with the intent that the person concerning whom they are made may obtain credit, money or goods thereupon." In the case of Cook v. Churchman,[14] the Supreme Court of Indiana, in a very able opinion, also construed the statute. The court had before it the case of Medbury v. Watson, *supra*, pointing out the error made in Massachusetts, and while the Indiana court did not expressly refer to the cause of the omission, it followed the construction laid down in Massachusetts. It said: "The statute we are now considering is in all respects the equivalent of what is commonly known as Lord Tenterden's Act." Further: "The question of liability must be determined by the inquiry, where the representations made concerning the character, ability, etc., of 'any other person,' with the intent that the person concerning whom they were made should obtain goods on credit thereby?"

The above case has been thus cited in Heintz v. Mueller:[15] "While the statute in the form in which it has been enacted in this state does not expressly require that the representations be made with a particular intent, it is held in Cook v. Churchman, that our statute is in all respects the equivalent of Lord Tenterden's act, and it is said that one of the tests, whether a case is within the statute or not, is whether the representations were made with the purpose to establish the credit or pecuniary ability of another." The question has never arisen in Vermont or Michigan, and it is speculative whether these states would follow the Massachusetts construction, as Maine and Indiana have done. All doubts on the subject could easily be removed if each of these states would at a subsequent session of their legislatures incorporate in the statute the omitted clause. A number of the states[16] have enacted this

[9] Missouri R. S. 1899, § 3422 (adopted March 15, 1845); Utah R. S. 1898, § 2468; California Code 1876, § 11974. In Utah and California, while the clause is omitted, the statute is worded differently from that of Massachusetts, being a copy in substance only.

[10] 39 Neb. 843, 863.

[11] 151 U. S. 112, 123.

[12] Michigan R. S. 1838, p. 330, § 5; Vermont R. S. 1839, ch. 61, § 3; Maine R. S. 1841, ch. 136, § 3; Indiana R. S. 1843, ch. 33, § 7.

[13] 62 Me. 423, 427.

[14] 104 Ind. 141.

[15] 19 Ind. App. 240, 246.

[16] Kentucky R. S. 1899, § 470; West Virginia Code

statute with the clause "to the intent or purpose that such person may obtain credit, money or goods thereupon" embodied therein, having no doubt copied direct from the English statute instead of from the Massachusetts revision.

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1899, ch. 98, § 1; Virginia R. S. 1904, § 2840; Wyoming R. S. 1899, § 2953; Georgia Code 1895, § 3815 (wording slightly different from the Massachusetts enactment).

INTERNATIONAL COURT OF ARBITRATION.

The best evidence of a world advancement in the domain of morality and intelligence, would be the organization of an international court of arbitration, whose opinions and judgments would be sustained and enforced by the public opinion of the world. It would be to national and international peace and order, what the courts of justice now are to the order and welfare of the domestic relations of peoples in civilized nations. One of the greatest blessings of established courts and codes of procedure in the settlement of disputes and the punishment of wrongs is the fact that they secure the peaceable settlement of such controversies, and thus avoid the waste and spreading disorders that follow the attempt of men to settle them by force and strong right arms. An active participation of over thirty years as a lawyer in the trial of cases in the courts convinces me, that is at last, the greatest merit of our judicial systems and administration of justice. It is doubtful whether actual natural justice is done in half the cases tried. But a decision is reached that is accepted by all concerned, and that alone is a great benefit to the parties and society in general. And while engaged in the contest of the trial the parties are under the eyes of the officers and judges of the law, restrained by their influence, and thus taught the necessity and the benefits of modertion and peaceable proceedings and methods. A personal combat between two or more persons disturbs the individual and domestic peace and tranquillity; the participants violate the peace and the law, and at last do nothing but make a test of force that in fact and law settles nothing. War between two or more nations violates the peace of the world and does civilization an actual injury by its scenes, examples and suggestions, and really settles nothing but the question of force and violence. When one or both of the combatants have so exhausted their energies that they are compelled to cease hostilities, they are compelled at last to recur to reason and common sense, to bear and forbear, to make a treaty of amity and peace. Ten to one, from the standpoint of real right and wrong and real material interests, each of them has more grievances and causes of war against each other, if there really are any such causes, than they had before they came together in actual hostilities. And from every humane and philosophic standpoint the obligation of nations to establish and maintain a court of arbitration of national differences by peaceable methods, to avoid national wars and to maintain international peace, is a thousand-fold greater than that of individuals in the same regard. Six to ten of the principal nations of the world could by international agreement organize a court of arbitration whose opinions would receive substantial obedience in the civilized world.

First, its jurisdiction should be carefully and legally defined; and the character of the disputes and controversies carefully outlined upon which its jurisdiction should be exercised.

Second, the manner of choosing, the qualification and personnel of the court, should be carefully defined. The court should be composed of about thirty-three members from the greatest lay jurists of the nations interested and for certain terms, so that no suspicion could arise in any case of packing the court to secure predetermined opinions.

Third, the manner of commencing proceedings before it and calling its jurisdiction into exercise, should be plainly and carefully outlined in the mode of impleading and summoning a party or parties to answer specific complaints.

Fourth, this would necessitate the forming of a plain and simple code of pleadings to be used before the court. There should be first a plain, precise complaint, stating the facts that constitute the matters of grievance. Next, an answer plainly admitting or denying or confessing the facts stated in the complaint

and stating any other facts that in the opinion of the defendant under international law and the jurisdiction of the court would constitute an excuse and defense to the facts stated in the complaint. Last a reply on the part of the complainant to be governed by the same rules as the answer. Either party of course at any stage of the pleadings to have the right to take the judgment of the court as to questions of jurisdiction and whether a given state of facts in a pleading stated such a cause of action as came within its jurisdiction.

Fifth, the manner and nature of proofs when called for the order in proceedings and arguments of counsel. The number of judges to make a *quorum* and to concur in an opinion to make it binding.

Sixth, the nature and extent and effect of the judgments that the court may pronounce upon the parties and matters in controversy.

In a word, a plain simple code of procedure to be applied to the conduct of controversies before the tribunal. The late Portsmouth Treaty between Russia and Japan in the midst of an awfully destructive war, that decided momentous national interests for both combatants and involved vast disappointment to the administration of each country; that too when both armies in the field were rested, recruited and demanding another chance at the awful game of war, demonstrates that as many as six of the greatest nations of the modern world by mutual international agreement, can organize an international tribunal, whose opinions and judgments could not and would not long be resisted by any power or powers. The court should be composed by choosing the greatest lay jurists of the nations interested, none of them to be related to any of the reigning families or executives of any of the nations interested. All national parties should have the right to go before the court with any matter of national difference, they think comes in the pale of its jurisdiction. The terms on which other sovereignties might enter and become parties to the treaty should be clearly defined. Ample provision should also be made for those sovereignties not members to submit their matters of difference, no matter what they might be, to the court. It would be a new era in the history of the world. The other nations would soon ask to become parties to the treaty for the protection of its moral influence. And when once it had become established and inspired confidence it would lead to an actual world disarmment. The most difficult question to deal with will be found, that of the so-called colonies or dependencies of the great nations. A safe and perhaps satisfactory basis of agreement on that part of the subject would be, that no dependency or colony should have the right to file its complaint against its principal government, unless with its permission; or unless the contest and hostilities between the dependency and principal government, reached such proportions and involved such interest as in the judgment of the court to disturb the international peace and to invite its intervention. That to that end the authorities of a dependency should have the right at any reasonable time to file complaint, to test the judgment of the court as to its jurisdiction on that subject. It seems that the modern sense of justice and charity of the great nations would lead them to give by agreement or rule an opportunity to any such considerable people of its citizens or subjects, such as a dependency, the right to state its grievances in an orderly and legal way before a tribunal of such men. Of course no nation could or would bind itself to modify its constitution or laws at the opinion or suggestion of the court except in special instances, in which for the sake of peace, with one or more of its dependencies, it agreed to submit some matter of that nature to the court. It would be found in practice to be a great source of consolation like a safety valve and oil on the troubled waters, to any such people feeling themselves aggrieved to have the right to thus state their complaints to the world and take its opinion. War is no more nor less than a return in so much to savagery; it is an evidence that the parties engaged in it have not attained the mind plane that enables them to direct their material interests and relations without an appeal to mere animal force. It is an admission in plain terms that the contestants are below that state and condition. As in every other instance in such case when men individually or collectively discard their better sense and mind power and submit to be led by ignorant resentment or any other uncontrolled passion, both must suffer the consequences. It seems that six or ten of the greater nations of the world to-day might rise to that plane.

Edina, Mo. O. D. Jones.

CONNECTING CARRIERS — LOSS OF GOODS — ; DELIVERING CARRIERS RESPONSIBLE.

WALTER v. ALABAMA GREAT SOUTHERN R. CO.

Supreme Court of Alabama, February 9, 1905.

In an action against a connecting carrier for injuries to goods, contributory negligence of the shipper in loading the goods on the car of the initial carrier was no defense.

Where, in a suit against a connecting carrier for injuries to goods, the carrier filed a plea of contributory negligence, an amendment thereto, denying that the goods were injured or damaged while in the defendant's possession, was repugnant to and inconsistent with the admission of defendant's negligence, implied in the allegation that plaintiff's negligence contributed to the injury.

Where plaintiff shipped household goods over a route consisting of several connecting carriers, under a bill of lading limiting the liability of each to negligence occurring on its own line, the discharging or delivering carrier was only liable for injuries to the property occurring on its line, or while the goods were in its possession.

Where, in a suit against a connecting carrier for injuries to goods, there was evidence that the defendant was the discharging or delivering carrier, and that the goods were received in a damaged condition, though delivered for shipment in good condition, the burden was on the defendant to show that the goods were not injured while in its possession, but were delivered in the same condition they were received from its connecting carrier, though the shipment was made under a contract limiting the liability of each carrier to injuries occurring on its own line.

Where a shipment containing household goods, some of which belonged to a husband and wife, some to the husband, and others to the wife, were all consigned to the husband at the point of destination, he had capacity to sue for injuries to the entire shipment, though he was not the absolute owner of all the property.

The complaint originally filed contained only one count, which was in words and figures as follows: "(1) The plaintiff claims of the defendant the sum of $1,000 damages, for that, whereas, on, to wit, the 19th day of October, 1901, the plaintiff delivered to New York Central & Hudson River Railroad Company, at Syracuse, in the state of New York, a lot of household goods, to be carried to Ensley, Ala., and there delivered to the plaintiff. Said household goods were delivered to and received by the defendant, and by the defendant carried to said Ensley. The defendant received said household goods as a common carrier, and as a connecting carrier on the route between said Syracuse and said Ensley, to be delivered to the plaintiff at said Ensley for reward. Said defendant did not safely carry and deliver said household goods, as it was its duty to do, but on the contrary, conducted itself so carelessly in and about carrying, transporting, and delivering the same that said household goods were damaged, broken, destroyed, injured, and rendered valueless to the plaintiff, to the damage of the plaintiff and in the sum of $1,000, which amount to recover he brings this suit." The complaint was amended by adding two other counts, which were in words and figures as follows: "(2) The plaintiff claims of the defendant the sum of $1,000 as damages, for that on, to wit, the 19th day of October, 1901, the defendant was a common carrier, and defendant has ever since said date been such common carrier, and that on, to wit, the said 19th day of October, 1901, the plaintiff delivered to the New York Central & Hudson River Railroad Company, at Syracuse, in the state of New York, a lot of household goods, to be carried to Ensley, Ala., and there delivered to plaintiff, and the defendant, as a common carrier aforesaid, operating a connecting line of railway on the route from Syracuse, N. Y., to Ensley, Ala., received the said goods, and undertook to deliver the same to the plaintiff at Ensley, Ala., for a reward. And the plaintiff avers that the defendant did not deliver said goods to the plaintiff in good or proper condition, or in the condition they were in when received by it, but that said goods, when delivered to plaintiff, were badly broken, injured, and damaged, and a large part thereof rendered wholly unfit for use, and the plaintiff was damaged thereby to the amount above claimed."

To the second count of the complaint the defendant demurred upon the following grounds: "(1) Said count does not aver or show that the goods of the plaintiff were in good condition when delivered to the New York Central & Hudson River Railroad Company. (2) Said count does not aver or show that the goods of the plaintiff were in good condition when received by the defendant as a connecting or delivering carrier. (3) Said count does not aver or show that the goods were injured or damaged or broken while in possession or under the control of the defendant. (4) Said count does not aver or show that defendant, or any of its agents or servants, in any way injured or damaged the goods of plaintiff." These demurrers were sustained.

The defendant pleaded the general issue, and assigned special pleas numbered 3 and 4. The substance of the third plea, as originally filed and as amended, is sufficiently shown in the opinion. The fourth plea, as amended was in words and figures as follows: "(4) That the car in which the plaintiff's goods were transported was received by the defendant from the Southern Railway Company at Chattanooga, in the state of Tennessee, closed and sealed, and remained closed and sealed from the time of its reception to the time of its delivery to the plaintiff at Ensley; and the defendant avers that the contents of said car could not be seen by the defendant without its breaking the seal and opening the car; and the defendant further avers that the condition of the contents of said car was not

visible to this defendant, or its agent, when so received by it from the Southern Railway Company, and that the defendant hauled said car load of goods from the said Chattanooga, Tenn., to the city of Birmingham, in the same condition in which it received said goods, and delivered the same to the plaintiff, or a connecting carrier, at said Birmingham, in such condition, and that, if said goods were damaged as alleged in said complaint, it was not through the fault or negligence of this defendant or its servants."

To the third plea, as amended, the plaintiff filed demurrers, among others, the following: "(1) The negligence of plaintiff, contributing to the injury to said goods, does not relieve the defendant from liability for the injury thereto. (2) The defendant does not show or aver that it was not guilty of negligence in handling or caring for said goods, or that it was without fault. (3) The defendant in said plea does not show or allege that the breaking of and injury to said goods were caused solely by the improper loading thereof. (4) The defendant in said plea does not show or allege that the receiving carrier did not know, or could not have known, that the said goods were improperly loaded when it received the same." The demurrers to the third and fourth pleas, as amended, respectively, were separately and severally overruled.

The other facts of the case are sufficiently stated in the opinion.

The plaintiff requested the court to give to the jury the following written charge, and severally and separately excepted to the court's refusal to give each of them as asked: "(1) The court instructs the jury that, if they believe the evidence in this case, they must find a verdict for the plaintiff. (2) If the plaintiff is entitled to recover in this action, he is entitled to recover for injury to all the goods consigned to him, whether all the said goods belonged to him or not. (3) The court instructs the jury that, if they find for the plaintiff in this case, they may award the plaintiff damages for injury to all the goods consigned to him, although some of the said goods may have belonged to the plaintiff's wife. (4) The court instructs the jury that the plaintiff is entitled to recover in this action, unless they find from the evidence that the defendant delivered the said car load of goods to another connecting carrier, and ceased from that time to exercise all jurisdiction or control over the said car load of goods, before the delivery of the said car load of goods to the plaintiff."

At the request of the defendant the court gave the general affirmative charge in its favor, and to the giving of this charge the plaintiff duly excepted.

DENSON, J.: The complaint in this case, when filed, contained only one count. By leave of the court the plaintiff amended the complaint by adding a second count. The second count is substantially in the form prescribed by Code 1896, p. 946, No. 15, for suit against a common carrier n a bill of lading with some additional averments made necessary by the suit having been brought against the defendant as a connecting carrier. The demurrer to this count was improperly sustained. McCarthy & Baldwin v. L. & N. R. R. Co., 102 Ala. 193, 14 So. Rep. 370, 48 Am. St. Rep. 29; L. & N. R. R. Co. v. Landers, 135 Ala. 504, 33 So. Rep. 482. After demurrers were sustained to count 2, the complaint was amended by adding count 3. The case was tried on counts 1 and 3. To these counts the defendant pleaded the general issue and two special pleas numbered 3 and 4. The plaintiff demurred to the special pleas, the court sustained the demurrers, the defendant amended the pleas, and the court then overruled the demurrers.

Plea 3, as originally written, sought to set up contributory negligence on the part of the plaintiff, in that the goods were improperly loaded on the car of the initial carrier by the plaintiff or his agent. That, under contracts of carriage such as are averred in the first and second counts of the complaint, contributory negligence on the part of the shipper is not available as a defense, has been fully and clearly settled by this court. McCarthy & Baldwin v. L. & N. R. R. Co., 102 Ala. 193, 14 So. Rep. 370, 48 Am. St. Rep. 29. The defendant's amendment to plea 3 was made by adding at the end of it these words: "And said household goods were not injured or damaged while in the possession of this defendant." After this amendment the demurrers were refiled, and the court overruled them. The plea is substantially the same as plea numbered 6 which was filed in the case last above cited, and in making the amendment it must have been intended by the pleader to relieve the plea of the criticism made by this court on that plea, and to negative all negligence on the part of the defendant in relation to the holding and carriage of the goods. The amendment is repugnant to and inconsistent with the admission of defendant's negligence, implied in the allegation that plaintiff's negligence contributed to the injury. However, the amendment to the plea within itself presented a defense to the plaintiff's cause of action. The defendant, being the discharging or delivering carrier, was liable only for injuries to the property occurring on its own line or while in its possession. Montgomery & West Point R. Co. v. Moore, 51 Ala. 394; Mobile & Girrard R. R. v. Copeland, 63 Ala. 219, 35 Am. Rep. 13; Montgomery & Eufaula Ry. Co. v. Culver, 75 Ala. 587, 51 Am. Rep. 483; K. C., M. & B. R. Co. v. Foster, 134 Ala. 244, 32 So. Rep. 773, 92 Am. St. Rep. 25. The plea avers that the goods were not damaged or injured while in the possession of the defendant. Proof of this averment would have acquitted defendant of liability. It being true that the amendment within itself presented a good defense, the plaintiff may have gotten rid of the objectionable features of the plea by motion to strike the immaterial part of it. Bain v. Wells, 107 Ala. 562, 19 So. Rep. 774; Ansley v. Bank of Piedmont, 113 Ala. 467, 21 So. Rep. 59, 59 Am. St. Rep.

122. Furthermore, the plea attempted to set up two defenses; and to make the defense under the plea effectual, it was incumbent on the defendant to sustain the truth of both these defenses, set up and connected as they were in one plea, and if one defense was good, but could not avail the defendant without proof, also, of the immaterial defense, this was no detriment to the plaintiff. King v. People's Bank, 127 Ala. 266, 28 So. Rep. 658; Bienville W. S. Co. v. City of Mobile, 125 Ala. 178, 27 So. Rep. 781. We think there was no error in overruling the demurrer as made to plea 3 as amended. Moreover, the proof without conflict showed that the goods were properly loaded. Mizzell v. Southern Ry. Co., 132 Ala. 504, 31 So. Rep. 86.

Plea 4, as amended, was not subject to demurrer upon the gronnds assigned to it, and the court committed no error in overruling the demurrer to that plea. McCarthy & Baldwin v. L. & N. R. R. Co., *supra*. The evidence without conflict showed that the plaintiff, William D. Walter. delivered to the New York Central & Hudson River Railroad Company, a common carrier of goods, at Syracuse, N.Y., a car load lot of household goods to be carried to Ensley, Ala., and there to be delivered to the plaintiff for a reward; that the goods were in good condition when they were delivered to said carrier; that they were properly packed and properly loaded on the car at Syracuse by the plaintiff; that the car was then closed and sealed by the New York Central & Hudson River Railroad Company; that said company issued to plaintiff a through bill of lading for said car load of goods, to Ensley, Ala.; and that the plaintiff was the consignee. In the bill of lading is contained the usual stipulation limiting the liability of each connecting carrier to loss which may occur on its own line. It was conceded that the defendant, Alabama Great Southern Railroad Company, was a connecting carrier en route from Syracuse to Ensley, and that the car of goods involved in this suit passed over its line en route to Ensley. One contention of the plaintiff in the court below was that the defendant, Alabama Great Southern Railroad Company, was the discharging or delivering carrier, and that the goods were delivered by the defendant to plaintiff at Ensley. The defendant, in respect to this contention of plaintiff, insisted that it delivered the goods to the Southern Railway Company at Birmingham, Ala., and that it was only an intermediate carrier.

The eighth assignment of error presents for consideration the property of the action of the city court in giving the general affirmative charge requested by the defendant in writing. One of the questions to be considered in connection with this assignment of error is, was there any evidence from which the jury might reasonably have inferred that the defendant, Alabama Great Southern Railroad Company, was the discharging or delivering carrier? We have carefully considered the evidence bearing upon this point, as set out in the record, and our conclusion is that there was ample evidence from which the jury might have been warranted in drawing the conclusion; and we may add that it is questionable whether any other inference would be a reasonable one. At least, the court was not warranted in giving the charge requested, upon the theory that the evidence did not warrant the submission of this question to the jury. The trial was had before the case of L. & N. R. Co. v. Landers, 135 Ala. 504, 33 So. Rep. 482, which overruled the case of N., C. & St. L. R. Co. v. Parker, 123 Ala. 683, 27 So. Rep. 323, had been decided, and we presume the trial court was influenced in its rulings by the Parker Case. It is well settled that where there are connecting carriers, as in the case at bar, in the absence of a special contract or some relation between them, each connecting carrier is liable only for a loss or injury on its line. In the case here we have seen that the contract stipulates that the liability of each line is limited to loss or injury occurring on its own line. K. C., M. & B. R. Co. v. Foster, 134 Ala. 244, 32 So. Rep. 773, 92 Am. St. Rep. 25, and authorities there cited. If the defendant was the discharging or delivering carrier, and the goods were in good condition when received by the initial carrier, then, upon proof made that, when the goods were delivered to plaintiff, they were in a damaged condition, were injured, it devolved upon the defendant to show the condition of the goods when received by it; in other words, to show that the damage or injury did not occur while the goods were in its possession or control as a common carrier. Montgomery & Eufaula Railway Co. v. Culver, 75 Ala. 587, 51 Am. Rep. 483. We do not think that the evidence in the case was sufficient to warrant the court in charging the jury, as matter of law, that the defendant had met the burden which rested upon it as a delivering or discharging carrier. The action of the court in giving the affirmative charge for the defendant was erroneous.

The evidence showed that the plaintiff was a married man; that the goods were household goods, and were used by plaintiff and his wife jointly, prior to the time of shipment, in their house at Syracuse, N.Y.; that the plaintiff and his wife were moving to Ensley, Ala., where the goods were shipped, and the goods were shipped to be used at Ensley by them jointly; that a part of the goods belonged to the plaintiff in person, and that the articles of said goods that belonged to the plaintiff in person were damaged, between the time of shipment and the time of delivery to him at Ensley, in an amount between $125 and $150; that a part of the remainder of said goods had been bought by the wife, with money that had been given to her by her husband, and that they were bought for use in their house, and the rest of the goods the wife acquired independently of the husband, and owned them before the marriage. In the case of Southern Express Company v. Armstead, 50 Ala. 350, the question as to the right of a consignee, who was not the absolute owner of the property, to maintain a suit agains

he carrier, arose, and the court held that "the consignee of goods has a right to sue for their loss by the carrier, notwithstanding another party may be the owner of them. The obligation is to deliver to him. Generally, the property vests in him by mere delivery to the carrier. Although the absolute or general owner of personal property, may support an action for an injury thereto, if he have the right of immediate possession, this does not necessarily divest the right of the consignee to sue, notwithstanding he has never had the actual possession." Judge Somerville, speaking for the court, in the case of Robinson & Ledyard v. Pogue & Son, 86 Ala. 257, 5 So. Rep. 685, said: "It is commonly held that the consignee in a bill of lading, where there is no reservation of title by the consignor, has vested in him such a property in the goods as to authorize him to sue the carrier in his own name for their injury, loss, or recovery in trover, detinue, or other appropriate action." In the case last cited, the case in 50 Ala., above quoted from, is cited as authority. There is nothing decided in the cases of Capehart v. Furman Farm Improvement Co., 103 Ala. 671, 16 So. Rep. 627, 49 Am. St. Rep. 60, and L. & N. R. R. Co. v. Allgood, 113 Ala. 163, 20 So. Rep. 986, when applied to the facts of the case in hand, that conflicts with the principle above announced.

We think charges 2 and 3 requested by plaintiff are open to the criticism that it was assumed in each of them that all the goods were damaged or injured, and for this reason there was no error in their refusal.

There was no error in the refusal of the court to give charge numbered 1, requested by the plaintiff.

Charge numbered 4, requested by the plaintiff, pretermits any inquiry as to whether the injury to the goods occurred on defendant's line, or while in defendant's possession as a carrier, and for this reason, if for no other, its refusal was correct.

For the errors pointed out, the judgment of the city court must be reversed.

Reversed and remanded.

McClellan, C. J., and Haralson and Dowdell, JJ., concur.

NOTE.—*Connecting Carriers—Responsibility—When Consignee May Sue for Damages.*—The above question is one of practical interest to every civil lawyer and is one which may frequently arise, and may be regarded as well settled in accordance with the opinion in the principal case. The opinion merely states a common sense view, there is no complication in the law, yet, at the same time, it is one which many lawyers will find instructive.

The plea in the above case avers that the goods were not damaged or injured while in the possession of the defendant, the proof of which would have relieved the defendant of liability. Aside from the cases cited in the opinion in the principal case, we find that, as far as an intermediate carrier is concerned, there is no question of liability for loss or injury occurring on its own road. C. & R. I. R. Co. v. Fahey, 52 Ill. 81, 4 Am. Rep. 587. It is said in the case of Montgomery & Enfaula R. Co. v. Culver, 51 Am. Rep. 487, 75 Ala. 578, "though the intermediate carrier occupies, to some extent, relations different from those of the first and last carriers, the principles applicable to them, and to carriers in general, will serve to elucidate the question we are considering. When goods are received by a common carrier for transportation, and are lost or damaged while in his custody, the presumption is, that it was occasioned by his default, but the owner must offer some evidence tending to show a non-delivery or a delivery in a damaged condition—in other words, some evidence of the loss or injury, while in the custody of the carrier. Proof of the mere reception of the goods by a carrier and of their condition when received, without more, does not create the presumption of loss or damage. S. & N. Ala. R. Co. v. Wood, 71 Ala. 215, 46 Am. Rep. 309. We have said that the duty of the intermediate carrier is to transport safely the goods to his terminus, and deliver in the same condition in which they were received to the next connecting line. A delivery, in such case, to the next connecting line is tantamount to, and must be governed by the same rules as a delivery to the consignee where the goods are to be so delivered at the terminus of the line of the intermediate carrier." On p. 488 *id.* the court says: "We have shown that when the goods are received in good condition by the first carrier, to be transported by successive and connecting lines, the presumption is they continue in the same condition until the contrary is made to appear. This presumption is indulged to place a *prima facie* liability on the carrier who delivers the goods in bad order, and who knows their condition when received. To hold that a delivery in bad order by the last carrier raises also a presumption of default in the intermediate carrier will present the anomaly of two consistent legal presumptions, that the same damage was caused by the default of the last carrier, and the intermediate carrier while the goods were in their respective custody at different times." See 6 Cyclopedia of L. & P. 483. As to the question of the right of the consignee to sue in his own name to recover the value of the goods, unless there has been a reservation of title in the consignor, is as well settled as the above questions. If goods are delivered to a common carrier for transportation to the purchaser without any condition, such delivery passes the title. State v. Wingfield, 115 Mo. 428, 37 Am. St. Rep. 406, and note; Dyer v. Great N. Ry. Co., 51 Minn. 345, 38 Am. St. Rep. 506, and note; McNeal v. Braun, 26 Am. St. Rep. 451, and extended note. For a full discussion of this question, see 51 Cent. L. J. 233.

JETSAM AND FLOTSAM.

SHORT STATUTES OF LIMITATION AFFECTING ACTIONS AGAINST MUNICIPALITIES.

On June 8 last we referred to the decision of the New York Court of Appeals in Waldon v. Jamestown, 178 N. Y. 213, and an article from the Virginia Law Register for May, 1904, approving of the result of that decision, but disapproving of the ground upon which it was placed. It was held that a provision in a city charter that in an action against the city for personal injuries a plaintiff must show, in order to maintain the action, that notice in writing of the place of the accident was given within forty-eight hours after its

occurrence, was substantially complied with when the notice was given within three days thereafter, it appearing that in the meantime the plaintiff had been in such condition from his injury as to be unable to transact business. The Virginia Law Register took exception to the policy that has grown up in this state of recognizing "substantial" compliance in this class of cases, and contended that the courts should take the bull by the horns and hold such statutory provisions void because depriving citizens of rights without due process of law. While concurring in the main in our contemporary's theoretical argument, we pointed out that the practical upshot in New York was to avoid injustice and that, as construed by our courts, the Supreme Court of the United States might not hold such statutes void under the fourteenth amendment of the federal constitution.

The question of the validity of a statute of this kind has recently been elaborately discussed by Mr. Justice Woodward at the Second Appellate Division of the Supreme Court in Williams v. Village of Port Chester (July, 1904), 89 N. Y. Supp. 671. The gist of the decision was that where plaintiff, after being injured by a defect in a highway in the Village of Port Chester, was unable, by reason of his injuries, to give notice thereof to the village within thirty days after the injuries were received, as required by Laws 1894, page 1570, chapter 623, but notice was given within thirty days after plaintiff was physically and mentally able to do so, the giving of such notice constituted a substantial, and therefore sufficient, compliance with the statute.

The learned judge apparently takes the ground that holding a plaintiff to an absolute compliance even with a thirty days' limitation as to giving notice would deprive him of due process of law and the equal protection of the law, in contravention of the first section of the first article of the state constitution and the fourteenth amendment of the federal constitution. Some of Judge Woodward's remarks may have a salutary effect upon the general legislative policy on the subject. He says: "We are so impressed with the manifest injustice of these short statutes, and the legislature is so persistent in enacting local statutes designed to deprive people of that equal protection of the law which the very spirit of our institutions demands, that we are constrained to add to the considerations which were presented upon the overruling of the demurrer." (Referring to a former decision in the same case, 72 App. Div. 505).

In Angle v. Chicago, etc., Ry. Co., 151 U. S. 1-19, it was said: "A right of action to recover damages for an injury is property, and has a legislature the power to destroy such property? An executive may pardon and thus relieve a wrongdoer from the punishment the public exacts for the wrong, but neither executive nor legislature can pardon a private wrong, or relieve the wrongdoer from civil liability to the individual he has wronged."

The cause of action against a municipality on tort being a right of property, the same can be taken from him only by due process of law. Judge Woodward concludes his opinion as follows: 'It only remains to consider what is due process of law, as applied to the case now before us. As we have previously suggested, due process of law is process due according to the law of the land, and—'The clause "law of the land" means a general and public law, equally binding upon every member of the community. * * * The right to life, liberty and property of every individual must stand or fall by the same rule of law that governs every other member of the body politic or land under similar circumstances; and every partial or private law which directly proposes to destroy or affect individual rights, or does the same thing by affording remedies leading to similar consequences, is unconstitutional and void. Were this otherwise, odious individuals and corporate bodies would be governed by one rule, and the mass of the community who made the law by another. The idea of a people through their representatives, making laws whereby are swept away the life, liberty and property of one or a few citizens, by which neither the representatives nor their other constituents are willing to be bound, is too odious to be tolerated in any government where freedom has a name. Such abuses resulted in the adoption of Magna Charta in England, securing the subject against odious exceptions, which is, and for centuries has been, the foundation of English liberty. Its infraction was a leading cause why we separated from that country, and its value as a fundamental rule for protection of the citizens against legislative usurpation was the reason for its adoption as a part of our constitution.' Judge Catron in Van Zand v. Waddel, 2 Yerg. 150, cited and approved in Gulf, Colorado & Santa Fe Ry. v. Ellis, 165 U. S. 150, 159, 17 Sup. Ct. Rep. 255, 41 L. Ed. 666, and in Cotting v. Kansas City Stockyards Co., 183 U. S. 79, 22 Sup. Ct. Rep. 30, 46 L. Ed. 92. See, also, the Federalist (Ford's Ed.), 379, 380; Opinion of the Judges of England, 20th of Henry VI; Opinion of the Judges of England, 2d of Richard III; Wynehamer v. People, etc., 13 N. Y. 378, 484.

In Gulf, Colorado & Santa Fe Ry. v. Ellis, 165 U. S. 159, 17 Sup. Ct. Rep. 258, 41 L. Ed. 666, it is said: 'Unless the legislature may arbitrarily select one corporation or one class of corporations, one individual or one class of individuals, and visit a penalty upon them which is not imposed upon others guilty of like delinquency, this statute cannot be sustained.' The court held that this could not be done. How, then, may it be said that the legislature may pick out one corporation, or one class of corporations, and exempt them from liability for negligence by which the constitutional rights of citizens are invaded? See, further, as to the law of the land, Bank of the State v. Cooper, 2 Yerg. 599, 24 Am. Dec. 517, 523; Jones v. Perry, 10 Yerg. 59, 30 Am. Dec. 430; Budd v. State, 3 Humph. 483, 39 Am. Dec. 189."

The main argument of the opinion is that due process of law is denied by an unwarranted discrimination in favor of municipal corporations. It might be suggested in answer to this that considerations of public expediency would apply as to public corporations, like municipalities, which would authorize a distinction between them and individuals or business corporations, provided the special limitations as to giving notice or beginning suit were reasonable in themselves. The short Statute of Limitations in favor of an executor after rejection of a claim has not, so far as we know, been attacked, and certainly has not been successfully attacked, on constitutional grounds. It may be that considerations of public exigency or convenience would be given a weight in support of discrimination in favor of municipal corporations similar to that derived from the necessity of an executor to have a prompt determination of claims in order to settle his estate.

Outside of the particular point of class legislation, we are of opinion that the requirement of a two-day notice is unreasonable, and literally enforced, would deprive a plaintiff of due process of law. Similar criticism may be offered on most of these short limitations, especially if it be actually alleged that physical or mental disqualification followed the accident

In order to obviate unconstitutionality the legislature should systematically provide for contingencies of disqualification and abandon such a short period as two days as to any case. See Roller v. Hally, 176 U. S. 398. In the meantime, there is much to be said for the practical policy which has been adopted by the court of appeals—judicial legislation though it be—of determining or permitting the determination in each case arising whether, under the circumstances, there has been such a substantial compliance with the statute as to be sufficient.

CORRESPONDENCE.

ARE THERE BREACHES OF CONTRACTS WHICH WOULD JUSTIFY PARTIES IN REGARDING THEM AS RESCINDED WHICH AT THE SAME TIME WOULD NOT JUSTIFY THE RIGHT TO REGARD THEM AS WHOLLY ABANDONED?

Editor of the Central Law Journal:

In your valuable Journal of October the 20th inst. we note the following query: "Are there breaches of contracts which would justify parties in regarding them as rescinded which at the same time would not justify the right to regard them as wholly abandoned?" And we have read the examination of cases in your editorial thereunder. As a matter of information to the bar, and as perhaps something of an answer to your query, we beg to call your attention to the case of L. S. & M. S. Ry. Co. v. Richards, 152 Ill. 59, wherein the rules in respect of such contracts are stated. The opinion is by Mr. Justice Shope, and is an instructive and learned dissertation upon the law applicable, and a very satisfactory examination of the authorities both American and English. It is there said: "It is well settled that where one party repudiates a contract and refuses longer to be bound by it, the injured party has an election to pursue either of three remedies: He may treat the contract as rescinded and recover upon the *quantum meruit* so far as he has performed; or he may keep the contract alive for the benefit of both parties, being at all times himself ready and able to perform, and at the end of the time specified in the contract for performance sue and recover under the contract; or he may treat the repudiation as putting an end to the contract for all purposes of performance and sue for the profits he would have realized if he had not been prevented from performing. In the latter case the contract would be continued in force for that purpose. Where, however, the injured party elects to keep the contract in force for the purpose of recovering future profits treating the contract as repudiated by the other party, in order to such recovery the plaintiff must allege and prove performance upon his part or a legal excuse for nonperformance." We submit that an examination of the Richards case will prove to be profitable reading upon the question.

E. C. HALL.

Joliet, Ill.

[The writer is quite familiar with the case referred to. We mention it in connection with another point in our editorial of the issue of Oct. 13th, vol. 61, p. 301. It is the leading case in this country upon the particular question which vexed the court till Mr. Justice Shope rendered his most able opinion. That opinion has given general satisfaction. We probably did not make ourselves as plain with regard to the question nvolved in our editorial you mention. Mr. Justice Shope mentioned it but declined to express himself upon that particular point, as it was not necessary. On p. 50, vol. 30, L. R. A. you will find this statement in Mr. Justice Shope's opinion: "It may be true that there are cases where the party would be justified in rescinding the contract, thereby putting an end to it for all purposes, where he would not be justified as treating it as renounced by the other party, which we are not called upon to decide." This is the very point we had under discussion in the article referred to. It was intimated in the case of Palm v. Ohio & M., 18 Ill. 217, that such a doctrine did exist. We tried to show that the right to rescind only existed when one party had evinced an intention to abandon the contract and that there is no distinction in the degree of the breach required, which gives the right to rescind and thereby call off the contractual relationship without doing anything else, and a case where the right to sue for damages arises. We contend that there must be a total abandonment of a contract before the right to even rescind the contract arises, consequently the learned judge who wrote the opinion in the Palm case, *supra*, is wrong in his intimation which Mr. Justice Shope said he was not called upon to decide, but when the real logic of the cases cited in the Lake Shore, etc., case is put to the test, there is found to be no middle ground before rescission may take place, there must be a total failure or abandonment of the contract, which is a question of fact for the jury. That being true when the right to rescind takes place the question of damages may be taken into consideration if the injured party has actually suffered damages, but he may not have suffered damages and merely desires to be released. He cannot get rid of the contract unless there has been a total breach or abandonment of the contract such as would amount to a rescission had one party to a contract the power to rescind.—EDITOR.]

BOOK REVIEWS.

STUDIES IN THE CIVIL LAW AND ITS RELATIONS TO THE JURISPRUDENCE OF ENGLAND AND AMERICA WITH REFERENCE TO THE LAW OF OUR INSULAR POSSESSIONS. BY WILLIAM WIRT HOWE OF THE NEW ORLEANS BAR.

In this day of case law, mad judges and attorneys, there is great need for consideration of the great underlying principles, which were in themselves sufficient to work out justice in a great age. These principles are neglected in the scramble for cases on "all fours." The mention of cases on "all fours" has become disgusting. Once a case is decided in a higher court, it outweighs principle, where, in the decision of it, the principle which should have governed was lost sight of. There is need for us all to study and understand the foundations upon which our jurisprudence has been constructed in order that in the process of case law, the spirit of a jurisprudence which has been sufficient in the past to conform to justice, may not be crushed out. Mr. Howe has given us a very valuable work, written in a most interesting style and which comes to give us such a view of the past as ought to have an influence in correcting the abuses of the day. Such a work every lawyer ought to have. Half the pleasure of being a lawyer lies in the veneration one has for the law, and yet, how many of the profession think of it only as a means

for subsistence, hear none of its deeper tones and go down to oblivion with no trace of an impression which shows that they held communion with the great masters "whose footsteps echo through the corridors of time." Mr. Howe's work shows that he does not belong to that class of lawyers. We have space only to quote from page 5 the following: "Savigny, quoted by Professor Bryce as the most famous of modern jurists, that in our science all results depend upon the possession of leading principles, and it is precisely on this possession that the greatness of the Roman jurist is based. * * * With them theory and practice are really not distinct. Their theory is so thoroughly worked out as to be fit for immediate application, in every rule whereby it is determined. And in the facility with which they pass from the universal to the particular and the particular to the universal, theirs is incontestable." The lack of the knowledge of fundamental principles and their relationships clogs the way of justice, in the present day. Mr. Howe says, p. 6: "The true jurist is a person who knows the law of his own country not only because he has qualified himself to state and apply it with some precision, but because he knows its origin, its history and its development.

This most excellent work is published in one volume and contained in 391 pages and is published by Little, Brown & Co., Boston, Mass. May be had in sheep for $3.50, in buckram $3.00.

BOOKS RECEIVED.

The Federal Statutes Annotated, Containing all the Laws of the United States of a General and Permanent Nature in force on the first day of January, 1903. Complied under the Editorial Supervision of William M. McKinney, Editor of the Encyclopædia of Pleading and Practice, and Peter Kemper, Jr. Vol. VII. Edward Thompson Company, Northport, Long Island, New York, 1905. Review will follow.

HUMOR OF THE LAW.

"Eh-yah!" said Constable Slackputter, telling of the affair. "He was so blamed drunk that he fell over his own feet and nearly fractured his skull by butting against a barber pole; and when I nabbed him he said, says he, 'Oshifer, what in shunder you sh'pose zhat lady wi' zhe striped stockin's on has got against me? Ponnonner nev' saw her beforsh 'nall m' life!' "

Patrick Murphy while passing down Tremont street, was hit on the head by a brick which fell from a building in process of construction. One of the first things he did, after being taken home and put to bed, was to send for a lawyer.

A few days later he received word to call, as his lawyer had settled the case. He called and received five crisp, new $100 bills.

"How much did you get?" he asked.

"Two thousand dollars," answered the lawyer.

"Two thousand, an' yes was after givin me $500? Fiath an' be gobs who got hit wid thot brick any way?"

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. ACCIDENT INSURANCE—Immediate Disability.—Disability is "immediate," within an accident policy, when it follows directly from an accidental hurt within such time as the processes of nature consume in bringing the person affected to a state of total incapacity to prosecute his business —Order of United Commercial Travelers of America v. Barnes, Kan., 80 Pac. Rep. 1020.

2 ACCIDENT INSURANCE—Notice of Injury.—If an insurance company, sued for an alleged loss, denies the same, it waives proof of notice of the loss.—Western Travelers' Acc. Assn. v. Tomson, Neb., 103 N. W. Rep. 695.

3. ACCOUNT STATED—Proof.—In an action on an account stated, plaintiff, failing to prove that the account was agreed on, cannot recover by proving the items of the account.—Mincer v. Green, 94 N. Y. Supp. 15.

4. ADVERSE POSSESSION—Right of Way.—If a railroad acquires a valid right of way, but does not include a certain strip in its inclosure, the possession of the inclosed strip does not carry with it possession of the land lying outside of it, as against one holding adversely for 20 years.—Chicago, B. & Q. R. Co. v. Abbott, Ill., 74 N. E. Rep. 412.

5. APPEAL AND ERROR—Authority to Sign Appeal Bond.—The authority of parties signing an appeal bond in the name of a surety company held established.—Eichorn v. New Orleans & C. R. Light & Power Co., La., 38 So. Rep. 526.

6. APPEAL AND ERROR—Bill of Exceptions.—Where a finding or decision is challenged on appeal, on the ground that it is not supported by sufficient evidence, it must affirmatively appear from the bill that it contains all the evidence.—Crooks v. Harmon, Utah, 81 Pac. Rep. 95.

7. APPEAL AND ERROR—Bill of Exceptions.—Where

the judge's certificate to a bill of exceptions bears a given date, and the acknowledgment of service was signed on the day bill of exceptions was filed with clerk, the presumption is that the different steps were taken in proper sequence.—McCain v. Bonner, Ga., 51 S. E. Rep. 36.

8. APPEAL AND ERROR—Discharge of Garnishee.—An order discharging a garnishee releases all property of defendant in the hands of the garnishee, and without a supersedeas bond on appeal from the order the right of the defendant to demand the property is not affected.—Cummings v. Edwards, Wood & Co., Minn., 103 N. W. Rep. 709.

9. APPEAL AND ERROR—Exceptions to Instruction.—A general exception to a charge is not well taken, unless the charge contains a single proposition which is objectionable, or if it contains several distinct propositions and none of them present a correct statement of the law.—Georgia, F. & A. Ry. Co. v. Lasseter, Ga., 51 S. E. Rep. 15.

10. APPEAL AND ERROR—Failure to Give Appeal Bond.—Failure to give a bond on appeal to the supreme court from a judgment of a district court on appeal from county commissioners is ground for dismissal.—Foresman v. Board of Comrs. of Nez Perce County, Idaho, 80 Pac. Rep. 1131.

11. APPEAL AND ERROR—Hostile Witness.—Refusal to permit defendant's wife to testify to her hostile feeling against defendant was not ground for reversal, where her hostility sufficiently appeared from the evidence in the case.—Fischer v. Brady, 94 N. Y. Supp. 25.

12. APPEAL AND ERROR—Necessity of Signature to Order Granting Appeal.—An order granting an appeal on motion in open court, and duly entered on the minutes, need not be signed by the judge.—Knoll v. Knoll, La., 38 So. Rep. 523.

13. APPEAL AND ERROR—Qualification of Surety Company of Appeal Bond.—The qualifications of a surety company on an appeal bond cannot be questioned, when it is authorized to act by the certificate of the secretary of state.—Eichorn v. New Orleans & C. R. Light & Power Co., La., 38 So. Rep. 526.

14. APPEAL AND ERROR—Questions for Review.—The action of the court in overruling a motion to strike out evidence is not reviewable on appeal, where no exception to the ruling appears in the record.—Stauber v Ellett, Mich., 103 N. W. Rep. 606.

15 APPEAL AND ERROR—Questions Not Raised at Trial—An objection on the ground of variance between the issues and proof cannot be reviewed, where the question was not raised in the trial court.—Chicago Union Traction Co. v. Newmiller, Ill., 74 N. E. Rep. 410.

16. APPEAL AND ERROR—Serving Bill of Costs.—Failure to serve the cost bill on the unsuccessful party before taxing costs is no ground for a reversal; the remedy being a proceeding to correct the taxation.—Jennings v. Frazier, Oreg., 80 Pac. Rep. 1011.

17. APPEAL AND ERROR—Trial De Novo.—When an appeal is from a judgment and an order denying a new trial, reversing such judgment and granting a new trial opens the whole case.—Meadows v. Osterkamp, S. Dak., 103 N. W. Rep. 643.

18. ASSIGNMENTS—Right of Assignee.—The assignee of a cause of action in equity acquires the same rights possessed by the assignor.—Sawyer v. Cook, Mass., 74 N. E. Rep. 356.

19. ASSIGNMENT FOR BENEFIT OF CREDITORS—Consent of Creditor.—A creditor who has assented to an assignment by the debtor for the benefit of creditors, cannot claim that it was fraudulent.—McAvoy v. Harkins, Wash., 81 Pac. Rep. 77.

20. ASSIGNMENTS FOR BENEFIT OF CREDITORS—Filing Claims.—An order granting or refusing petition of a creditor in insolvency to file a claim for allowance after expiration of the time limited is within the discretion of the trial court.—*In re* Willard, Minn., 103 N.W. Rep. 562.

21. ATTORNEY AND CLIENT—Disbarment.—To justify the disbarment of an attorney, his conduct must have been such as to evidence his unfitness for that confidence and trust which attend the relation of attorney and client and the practice of law before the courts, or it should show such lack of personal honesty and of good moral character as to render him unworthy of public confidence.—*Ex parte* Eastham, Oreg., 80 Pac. Rep. 1057.

22. ATTORNEY AND CLIENT—Effect of Private Frauds.—Acts of fraud and dishonesty by an attorney, which affect only private persons, who do not appear as relators, are sufficient ground for disbarment on a proceeding by an attorney general.—People v. Payson, Ill., 74 N. E. Rep. 383.

23. BANKRUPTCY—Assignment of Future Wages.—An assignment of wages to be earned in the future to secure a debt cannot be enforced against a debtor, after his discharge in bankruptcy, as to wages thereafter earned by him.—Leitch v. Northern Pac. Ry. Co., Minn., 103 N. W. Rep. 704.

24. BANKRUPTCY—Effect of Discharge.—A judgment against an insolvent, after he is adjudged a bankrupt and before his final discharge, on a provable claim, held canceled by such discharge.—Cavanaugh v. Fenley, Minn., 103 N. W. Rep. 711.

25. BANKRUPTCY—Jurisdiction of Bankruptcy Court to Determine Adverse Claims.—Failure of adverse claimants to abandon claims to property not in possession of receiver in bankruptcy held not a waiver of their objections or consent to an exercise of jurisdiction by the court of bankruptcy.—First Nat. Bank v. Chicago Title & Trust Co., U. S. S. C., 25 Sup. Ct. Rep. 693.

26. BANKRUPTCY—Proceeds of Life Insurance.—Exemption of policies of life insurance under Bankr. Act, ch. 541, § 6, where exempt from execution by the state law, held not qualified by proviso in section 70a of that act.—Holden v. Stratton, U. S. S. C., 25 Sup. Ct. Rep. 656.

27. BANKRUPTCY—Special Judgment.—In an action on a note containing a waiver of homestead and exemption the petition may be amended by alleging that before suit defendant was adjudged a bankrupt, that certain property was set apart as exempt, and praying for a special judgment against such property.—Wright v. Horne, Ga., 51 S. E. Rep. 30.

28. BANKS AND BANKING—Fraud Inducing Sale of Stock.—Unauthorized action of the directors of a bank in withholding assent to the transfer of stock to a purchaser thereof held not evidence of fraud on the purchaser.—Penfold v. Charlevoix Sav. Bank, Mich., 103 N. W. Rep. 572.

29. BANKS AND BANKING—Fraud of Officer.—In suit by a bank depositor against the bank and its president to establish the equitable title of the bank to certain shares of railroad stock, contention of president that judgment was unfair and inequitable held untenable.—Dundon v McDonald, Cal., 80 Pac. Rep. 1034.

30. BILLS AND NOTES—Negotiability.—Where a note payable to order is assigned without indorsement, its negotiable character is destroyed.—Cornish v. Wooiverton, Mont., 81 Pac. Rep. 4.

31. BILLS AND NOTES—Transactions with Decedent.—Where, in an action by an administrator on a note, there is no evidence as to the transaction in which the note was given, except the evidence of the maker, incompetent under the statute, judgment must be rendered for plaintiff.—Union Trust Co. v. Morgans, Mich., 103 N. W. Rep. 568.

32. BONDS—Consideration.—Mere fact that bond bore date two days later than contract in connection with which it was given held to afford no basis for contention of sureties on bond that there was no consideration for the bond.—Stauber v. Ellett, Mich., 103 N. W. Rep. 606.

33. BOUNDARIES—Government Corners.—On an issue as to the location of a government corner, an instruction that, if there is a discrepancy between the field notes and the actual location of the corner as made on the

ground, the location prevails, was correct.—Unzelmann v. Shelton, S. Dak., 103 N. W. Rep. 646.

34. BRIDGES — Liability of Municipality for Injuries Due to Defect.—In an action for personal injuries resulting from a defective bridge, defendant city held to have asserted control over the bridge, and to be bound to use ordinary diligence to keep it in a reasonably safe condition.—Mackay v. Salt Lake City, Utah, 81 Pac. Rep. 81.

35. BROKERS—Right to Commissions.—Brokers, employed to dispose of a real estate sale contract having produced a purchaser ready, able, and willing to purchase on the terms prescribed, held entitled to recover commissions.—Levy v. Timble, 94 N. Y. Supp. 8.

36. CANCELLATION OF INSTRUMENTS—Quieting of Title. —An owner of land held entitled to have an unenforceable contract, apparently showing that the land was held in trust, canceled as a cloud upon title.—Sawyer v. Cook, Mass., 74 N. E. Rep. 356.

37. CARRIERS—Duty Toward Persons Riding on Freight Trains.—A person traveling on a freight train on a stock shipper's pass assumes risks and inconveniences incident to the methods employed in the operation of freight trains. — Chicago, B. & Q. R. Co. v. Troyee, Neb., 103 N. W. Rep. 680.

38. CARRIERS — Excess Fare on Failure to Procure Ticket.—Passenger cannot be charged an excess rate of fare for failing to procure a ticket before boarding the train, unless he was afforded a reasonable opportunity to procure the ticket.—Rivers v. Kansas City, M. & B. R Co., Miss., 38 So. Rep. 508.

39. CARRIERS—Injury to Passengers.—That a carrier did as others have customarily and ordinarily done held no defense in case of injury to passenger.—Williams v. Spokane Falls & N. Ry. Co., Wash., 80 Pac. Rep. 1100.

40. CARRIERS—Limiting Liability.—A common carrier cannot contract against liability for damages arising through its own negligence.—Yazoo & M. V. R. Co. v. Grant, Miss., 38 So. Rep. 502.

41. CARRIERS—Pleadings.—The allowance of a motion to require plaintiff to elect on which one of several grounds of recovery for the same right he will proceed to trial is largely within the discretion of the trial court —Harvey v. Southern Pac. Co., Oreg., 80 Pac. Rep. 1061.

42. CARRIERS—Premature Starting.—A sudden jerk of a street car before a passenger had succeeded in boarding it held sufficient to charge street car company with negligence.—Clark v. Durham Traction Co., N. Car , 50 S. E. Rep. 518.

43. CHATTEL MORTGAGES — Conversion. — Action of mortgagee of chattels, whose mortgage had expired, in paying out proceeds of sale of the property which had come into his hands as stakeholder, held not a conversion.—Atkins v. Boyle, Colo., 80 Pac. Rep. 1067.

44. CHATTEL MORTGAGES—Effect of Alteration.—The alteration of a chattel mortgage after execution and delivery does not divest the title of a purchaser under the mortgage as made.—Stearns v. Oberle, 94 N. Y. Supp. 37.

45. COMMERCE—State Taxation of Vessels Engaged in Interstate Commerce. — Vessel engaged in interstate commerce, but employd within the limits of the state, held subject to taxation in the state, though enrolled under Rev. St. U. S., §§ 4141, 4311, at a port outside the state.—Old Dominion S. S. Co. v. Commonwealth of Virginia, U. S. S. C., 25 Sup. Ct. Rep. 686.

46. CONSTITUTIONAL LAW—Intoxicating Liquors.—Laws N. Car., 1903, p. 749, ch. 434, prohibiting sales of intoxicating liquors by other than licensed retail dealers, and making possession of more than one quart of liquor *prima facie* evidence of keeping it for sale, held not unconstitutional as a legislative invasion of the judicial department.—State v. Barrett, N. Car., 50 S. E. Rep. 506.

47. CONSTITUTIONAL LAW—Right of Legislature to Oust Member.—Under Const., art. 3, and art. 4, § 9, the court cannot revise even the most arbitrary action of the legisature in expelling a member.—French v. State Senate, Cal., 80 Pac. Rep. 1031.

48. CONSTITUTIONAL LAW—Taxation of Street Railway. —Street railway company held not denied equal protection of the laws by a municipal tax on its business of $100 per mile of its trackage, because steam railroad company is not subject to tax.—Savannah, T. & I. of H. Ry. v. City of Savannah, U. S. S. C., 25 Sup. Ct. Rep. 690.

49. CONTRACTS — Assignment of Contract for Support.—Obligation of son to pay his father an annuity and to discharge incumbrances on property conveyed under contract for support held assignable.—Hurley v. McCallister, S. Dak., 103 N. W. Rep. 644.

50. CONTRACTS—Charge of Architect for Extra Compensation.—Though a contract with an architect provides that no charges for extra compensation shall be made, unless previously agreed upon in writing, the parties can modify the contract, or make a further contract without writing.—Ritchie v. State, Wash., 81 Pac. Rep. 79.

51. CONTRACTS — Construction Where Contained in Several Instruments. — Where a contract consists of several different instruments, each document will be read and construed with reference to the others.—Sterling v. Head Camp, Pacific Jurisdiction, Woodmen of the World, Utah, 80 Pac. Rep. 1110.

52. CONTRACTS—Failure to Complete Work in Stipulated Time.—Where a contractor failed to complete a building within the time required, but the owner thereafter urged completion, he could not, after completion, resist payment because the work was not finished in time.—Crocker-Wheeler v. Varick Realty Co., 94 N. Y. Supp. 23.

53. CONTRACTS—Right to Rely Upon Representations as to Law.—A party to a contract is not entitled to rely upon the representations of the other party as to the law.—Hooker v. Midland Steel Co., Ill., 74 N. E. Rep 445.

54. CORPORATIONS — Authority of Secretary to Bind Company.—Secretary of a mining company held to have no implied authority to bind the company beyond the authority given him as secretary.—Farrell v. Gold Flint Min. Co., Mont., 80 Pac. Rep. 1027.

55. CORPORATIONS—By-Laws Construed.—By-laws of a corporation construed, and held to authorize the vice president to call special meetings of the directors, in the absence or inability of the president to act.—Bell v. Standard Quicksilver Co , Cal., 81 Pac. Rep. 17.

56. CORPORATIONS—Creation.—Incorporators under a charter declaring that they have been created a body politic and corporate become a corporation under the laws of Mississippi, for the purpose of suing and being sued in the federal courts as a citizen of that state, after compliance with statutory requirements.—W. L. Wells Co. v. Gastonia Cotton Mfg. Co., U. S. S. C., 25 Sup. Ct. Rep. 640.

57. CORPORATIONS—Defect of Parties to Action. — A bill by stockholders of a corporation for an accounting of moneys alleged to have been received and disbursed by defendant as president of the corporation held properly dismissed for failure to make the corporation a party defendant.—Peck v. Peck, Colo., 80 Pac. Rep. 1063.

58. CORPORATIONS—Innocent Purchaser.—Notice to a promoter of a corporation, and who is also manager and resident director, held notice to the corporation, so that it cannot claim to be an innocent purchaser.—California Consol. Min. Co. v. Manley, Idaho, 81 Pac. Rep. 50.

59. CORPORATIONS—Lien on Stock.—A corporation has no lien on its shares for debts due to the company, unless the lien is provided for by statute, or by the charter or by-laws of the corporation.—Herrick v. Humphrey Hardware Co., Neb., 103 N. W. Rep. 685.

60. CORPORATIONS— Powers of a Corporation. — The powers of a corporation in effecting its objects are as broad as those of an individual, when not expressly prohibited.—Herrick v. Humphrey Hardware Co., Neb., 103 N. W. Rep. 685.

61. COSTS—Modification of Decree.—Defendant being guilty of laches to the same extent as plaintiff, he was not entitled to have an adverse decree modified as to

costs because of plaintiff's delay.—Hill v. Fuller, Mass. 74 N. E. Rep. 361.

62. CRIMINAL EVIDENCE—Confessions.—All confessions are *prima facie* inadmissible as evidence, and a predicate must be laid for the introduction of an alleged confession.—State v. Stallings, Ala., 38 So. Rep. 261.

63. CRIMINAL TRIAL—Indeterminate Sentence.—Indeterminate sentence not erroneous, because the convict, under Commutation Law 1886, p. 28, ch. 21, may earn commutation entitling him to his discharge before the expiration of the minimum sentence.—People v. Deyo, N. Y., 74 N. E. Rep. 430.

64. CRIMINAL TRIAL—Separation of Jury.—Where, in a capital case, the jury separated, it is sufficient *prima facie* showing for a new trial, and shifts the burden onto the state to show that nothing transpired that could prejudice the defendant.—State v. Sly, Idaho, 80 Pac. Rep. 1125.

65. CRIMINAL TRIAL—Unlawful Sale of Intoxicating Liquors.—Sale of intoxicating liquor held a possible violation of both town o dinance and state law, to that, on prosecution by state, plea of former conviction, based on conviction and sentence by police court for same offense, was not available.—State v. Lytle, N. Car., 51 S. E. Rep. 66.

66. CUSTOMS—Evidence.—In replevin by plaintiff brewing company for beer kegs, certain evidence held inadmissible to show a custom of parties buying beer to return the empty kegs to the brewery.—Jos. Schlitz Brewing Co. v. Grimmon, Nev., 81 Pac. Rep. 43.

67. DAMAGES—Breach of Contract.—Any necessary expense which a contracting party incurs in complying with the contract may be recovered as damages on its breach.—McKenzie v. Mitchell, Ga., 51 S. E. Rep. 34.

68. DAMAGES—Excessive Verdict. — Where an injury produced total blindness in one eye and the other eye was affected, and the injury brought about a permanent disfigurement, and plaintiff suffered much physical pain, a verdict of $5,000 was not excessive.—Georgia, F. & A. Ry. Co. v. Lassater, Ga., 51 S. E. Rep. 15.

69. DEAD BODIES—Interest of Widow.—A widow has an interest in the unburied body of her deceased husband which the courts will recognize.—Louisville & N. R. Co. v. Wilson, Ga., 51 S. E. Rep. 24.

70. DEATH—Statutory Action for Wrongful Death of Parent.—The right of minor children of a person killed by the fault of another to an action is a statutory right, and the extent of the relief is controlled by the statute.—Eichorn v. New Orleans & C. R., Light & Power Co., La., 38 So. Rep. 526.

71. DEEDS—Conveyance from Mother to Son. — The mere fact that the execution of a deed from mother to son was unwise or improvident on the mother's part constitutes no ground for avoiding the deed.—Powers v. Powers, Oreg., 80 Pac. Rep. 1058.

72. DEEDS—Delivery.—Though a valid delivery of a deed was not made at the time of its execution, the grantor could thereafter ratify the wrongful taking of the deed by the grantee.—Whitney v. Dewey, Idaho, 80 Pac. Rep. 1117.

73. DEEDS—Grantee.—Where a grantee in a deed fails to comply with the terms of a condition subsequent, a grantor, prior to an action to recover possession, who enters upon the premises to revest himself with the estate, held entitled to a judgment in his favor.—Randall v. Wentworth, Me., 60 Atl. Rep. 871.

74. DEEDS—Secret Intentions —Where a deed is formally delivered and accepted, evidence of a secret intention of the parties that it should not operate to transfer title is incompetent.—Wilbur v. Grover, Mich., 103 N. W. Rep. 583.

75. DISMISSAL AND NONSUIT—Power of Trial Court.—Where a case was dismissed because the complaint could not be understood without an adjournment to read it, a new trial was properly granted.—Daniel v. Manhattan Life Ins. Co., 94 N. Y. Supp. 49.

76. DIVORCE—Foreign Decree.—The courts of Illinoi may inquire into the proceedings of the courts of another state resulting in a divorce decree, for the purpose of determining whether the court rendering the decree had jurisdiction of the subject-matter and of the parties.—Field v. Field, Ill., 74 N. E. Rep. 443.

77. DIVORCE—Pendency of Action for Separate Maintenance.—Pendency of suit for separate maintenance, in which the husband's cross-complaint, praying for a divorce, was stricken, held not to preclude the husband from bringing an independent suit for divorce.—Cupples v. Cupples, Colo., 80 Pac. Rep. 1039.

78. EMINENT DOMAIN - Condemnation for Public Use.—A statute in Utah, under which an individual landowner may condemn a right of way across his neighbor's land to enlarge irrigation ditch therein, to obtain water from a stream in which he has an interest, held valid.—Clark v. Nash, U. S. S. C., 25 Sup. Ct. Rep. 676.

79. EMINENT DOMAIN—Erection of Electric Poles and Wires.—A city, under authority given, after condemnation of a street, to permit erection of poles and wires over streets, held authorized only to permit it, subject to right of abutting owner to compensation.—Brown v. Asheville Electric Light Co., N. Car., 51 S. E. Rep. 62.

80. ESTOPPEL—Where One of Two Parties Must Lose.—Where one of two parties must lose, the loss should fall upon the one whose action made possible such loss.—Pennypacker v. Latimer, Idaho, 81 Pac. Rep. 55.

81. ESTOPPEL—Railroad Right of Way.—In ejectment to recover land claimed by a railroad for right of way a recital in a mortgage executed by plaintiff, reserving the land in controversy, held inadmissible to create an estoppel in favor of the railroad company.—Chicago, B. & Q. R. Co. v. Abbott, Ill., 74 N. E. Rep. 412.

82. EVIDENCE—Gaming.—Where several persons were jointly indicted for gaming by name, a conviction of one of them was not authorized by evidence not disclosing that any of those jointly indicted with him played.—Hubbard v. State, Ga., 51 S. E. Rep. 11.

83. EVIDENCE—Parol Conditions to Deed.—A grantor by absolute warranty deed, convey such a title to hit grantee as will enable him to pass a good title to a specific corporation, and attach conditions precluding the grantee from transferring an equally good title to another —Whitney v. Dewey, Idaho, 80 Pac. Rep. 1117.

84. EVIDENCE—Representations of Mortgagor.— Representations of a mortgagor to his creditors, made in the absence of the mortgagee and without his knowledge, that the mortgage debt had been paid, are not binding on the mortgagee.—Smith v. Leavenworth, Oreg., 80 Pac. Rep. 1010.

85. EXECUTORS AND ADMINISTRATORS — Accounting and Notice of Appeal.—The holder of an allowed claim against an estate not having appeared on the settlement of the executor's account, it was not necessary to serve him with notice of an appeal therefrom.—*In re* Carpenter's Estate, Cal., 80 Pac. Rep. 1072.

86. EXECUTORS AND ADMINISTRATORS — Claims for Services Rendered Decedent.—As to services during the last illness of a decedent for board, room rent, and the board and rent of nurses, presumptions both of law and fact arise that payment is to be made therefor.—Luizzi v. Brady's Estate, Mich., 103 N. W. Rep. 574.

87. EXECUTORS AND ADMINISTRATORS — Payment of Legacies.—Reasonable time will be allowed for the sale of property after the death of the life tenant to pay legacies.—*In re* Schabacker, 94 N. Y. Supp. 80

88. EXECUTORS AND ADMINISTRATORS—Sale of Realty.—Where sale of property is directed by will to pay legacies, legatees held only entitled to interest after a sale two years from the death of the life tenant.—*In re* Schabacker, 94 N. Y. Supp. 80.

89. EXECUTORS AND ADMINISTRATORS—Widow's Right to Interest on Her Allowance.—A widow is not entitled to recover interest on her widow's allowance from her husband's estate from the date it was set off by commissioners.—Field v. Field, Ill., 74 N. E. Rep. 443.

90. FEDERAL COURTS—Ancillary Jurisdiction —One of

two corporations bearing the same name but incorporated in different states will be restrained by ancillary suit from assailing title of purchaser under decree of federal court foreclosing trust deed, the property lying in both states.—Riverdale Cotton Mills v. Alabama & G. Mfg. Co., U. S. S. C., 25 Sup. Ct. Rep. 629.

91. FEDERAL COURTS—Due Process of Law.—Allegation in bill held not an assertion that plaintiff was deprived of his interest in certain mining claim without due process of law, so as to support jurisdiction of federal court, irrespective of citizenship.—Empire State-Idaho Mining & Developing Co. v. Hanley, U. S. S. C., 25 Sup. Ct. Rep. 691.

92. FEDERAL COURTS—Final Judgment.—Judgment of highest state court, reversing decree of trial court in equity and remanding the cause is not final, so as to sustain writ of error in Supreme Court of the United States. —Schlosser v. Hemphill, U. S. S. C., 25 Sup. Ct. Rep. 654.

93. FIRE INSURANCE—Place for Exhibiting Books of Account.—The clause requiring insured to produce for examination his books of account at a reasonable place means a reasonable place in the locality where the property was situated.—Tucker v. Colonial Fire Ins. Co., W. Va., 51 S. E. Rep. 86.

94. FIRE INSURANCE—Statement of Plaintiff's Claim.—A statement as to the nature of plaintiff's claim in an action on policy is no part of the declaration, and not subject to demurrer.—Tucker v. Colonial Fire Ins. Co., W. Va., 51 S. E. Rep. 86.

95. FISH—Fishing Rights Under Treaty With Indians.—Right of taking fish in common with citizens of Washington, secured to Yakima Indians by treaty of 1859, survives the private acquisition of lands bordering the Columbia river.—United States v. Winans, U. S. S. C., 25 Sup. Ct. Rep. 662.

96. FRAUD—Misrepresentations as to Price Paid for Property.—Misrepresentations as to the price paid for property by the vendor held not to constitute actionable deceit.—Beare v. Wright, N. Dak., 103 N. W. Rep. 632.

97. FRAUD—Stock Subscription.—A subscriber to stock may not sue the soliciting agent for falsely informing plaintiff that his subscription was canceled, save in an action at law.—Eames v. Brunswick Const. Co., 94 N. Y. Supp. 24.

98. FRAUDS, STATUTE OF—Servitude on Real Estate.—A license to do certain acts on the lands of another creates no estate therein, and is revocable at will, and may rest in parol.—Howes v. Barmon, Idaho, 81 Pac. Rep. 48.

99. FRAUDULENT CONVEYANCES—Vendee's Bona Fides.—In order to avoid a sale of chattels on the ground of fraud, the vendee must have had notice of the vendor's fraudulent design.—Jennings v. Frazier, Oreg., 80 Pac. Rep. 1011.

100. FRAUDULENT CONVEYANCES—Want of Consideration.—A conveyance for a mere nominal consideration, when attacked as fraudulent, will be subjected to rules applicable to voluntary transfers.—California Consol. Min. Co. v. Manley, Idaho, 81 Pac. Rep. 50.

101. GAMING—Option Dealing in Grain.—On an issue as to whether a broker and customer had intended any actual delivery in discharge of options, held that the intention might be established by all the surrounding circumstances.—Bartlett v. Slusher, Ill., 74 N. E. Rep. 370.

102. GARNISHMENT—Duty of Garnishee to Give Notice to Principal Debtor.—Duty of garnishee to give notice of garnishment proceedings to principal debtor is discharged by pleading the judgment in bar of an action on the debt, where nearly a year remained in which the debtor might litigate his liability.—Harris v. Balk, U. S. S. C., 25 Sup. Ct. Rep. 625.

103. HABEAS CORPUS—Chinese Exclusion Cases—*Habeas corpus* denied in Chinese exclusion cases, where refusal of admission has been affirmed on appeal by the Secretary of Commerce and Labor.—United States v. Ju Toy, U. S. S. C., 25 Sup. Ct. Rep. 644.

104. HUSBAND AND WIFE—Estoppel.—The owner of land which by mistake had been conveyed to another held not estopped to claim it as against the other's creditors.—Huot v. Reeder Bros. Shoe Co., Mich., 103 N. W. Rep. 569.

105. INJUNCTION—Contempt.—Violations by those not parties and not personally served with an injunction held punishable as a criminal contempt.—People v. Marr, N. Y., 74 N. E. Rep. 431.

106. JUDGMENT—Separate Maintenance.—A decree for separate maintenance of wife in a suit brought under Laws Ill. 1827, p. 115, held *res judicata* in Illinois on question of desertion, when affirmed by Appellate and Supreme Courts.—Harding v. Harding, U. S. S. C., 25 Sup. Ct. Rep. 679.

107. JUDGMENT—Vacating Judgment After Term.—At common law the court cannot vacate a judgment after the expiration of the term at which it is rendered.—People v. District Court of City and County of Denver, Colo., 80 Pac. Rep. 1065.

108. LANDLORD AND TENANT—Breach of Covenant to Pay Taxes.—In an action against a lessee for breach of a covenant to pay taxes, the defense that before part of the taxes were assessed the property had been sold for taxes and not redeemed by the lessor is not open to defendant.—Richardson v. Gordon, Mass., 74 N. E. Rep. 344.

109. LANDLORD AND TENANT—Damages for Breach of Covenant to Repair.—On breach of a landlord's ordinary covenant to repair, the measure of damages is the cost of the repairs, or the difference in value of the premises with and without the repairs.—Beakes v. Holzman, 94 N. Y. Supp. 33.

110. LIBEL AND SLANDER—Legal Directories.—A complaint for libel for publishing plaintiff's name in a legal directory without a rating held demurrable for failure to allege that the absence of a rating was derogatory to plaintiff's professional character or ability.—Kirby v. Martindale, S. Dak., 103 N. W. Rep. 648.

111. LIFE INSURANCE—Exemption from Liability for Debts.—Exemption of proceeds of life insurance from liability for debt by Laws Wash. 1895, p. 336, and Laws Wash. 1897, p. 70, held not forbidden by the Constitution of that state.—Holden v. Stratton, U. S. S. C., 25 Sup. Ct. Rep. 656.

112. MANDAMUS—Building Permits.—Mandamus does not lie to compel action by the building department of a city, in advance of the preparation and adoption of proper plans, which have been arbitrarily or unreasonably condemned.—Hartman v. Collins, 94 N. Y. Supp. 63.

113. MANDAMUS—To Reinstate Expelled Members of Legislature.—In mandamus to compel the Senate to reinstate expelled members, it will be presumed that members had notice of the expulsion proceedings.—French v. State Senate, Cal., 80 Pac. Rep. 1031.

114. MASTER AND SERVANT—Failure to Warn Servant of Defects.—A master held not negligent in failing to warn a workman of defects in the floor of an unused room which the workman was ordered to clean.—O'Keefe v. John P. Squire Co., Mass., 74 N. E. Rep. 340.

115 MASTER AND SERVANT—Fellow Servants.—The fact that the negligence of a fellow servant concurs with the master in causing injury to a servant does not exempt the master from liability for his negligence.—Merrill v. Oregon Short Line R. Co., Utah, 81 Pac. Rep. 85.

116. MASTER AND SERVANT—Safe Place to Work.—A stevedore held not liable for the death of a servant caused by the defectiveness of the hatch of a vessel, over which such stevedore had no control, for failure to furnish deceased with proper appliances and a safe place to work.—Hyde v. Booth, Mass., 74 N. E. Rep. 337.

117. MONOPOLIES—Injunction Against Distributing Market Quotations.—Contracts with telegraph companies, by which Chicago Board of Trade limits the communication of quotations of prices on sales fo future delivery which it might have refrained from communicating to any one, held not a monopoly or contract

in restraint of trade.—Board of Trade of City of Chicago v. Christie Grain & Stock Co., U. S. S. C., 25 Sup. Ct. Rep. 637.

118. MORTGAGES—Authority of Agent.—The mere fact that a company acted as the agent of the owner of the mortgage in collecting interest was not sufficient to show authority to collect the principal and discharge the mortgage.—Cornish v. Woolverton, Mont., 81 Pac. Rep. 4.

119. MORTGAGES—Deed Absolute.—Deed absolute in form should be held a mortgage only where the relation of the parties to each other continues as debtor and creditor.—Samuelson v. Mickey, Neb., 103 N. W. Rep. 671.

120. MORTGAGES—Extension of Time for Redemption.—A mortgagee may by parol extend the statutory period for redemption, and equity will enforce such agreement.—Taggart v. Blair, Ill., 74 N. E. Rep. 372.

121. MORTGAGES—Mortgagee in Possession.—A mortgagee, who obtains lawful possession under his mortgage, cannot be ousted, unless the mortgagor redeems the premises by paying off the balance due on the mortgage.—Becker v. McCrea, 94 N. Y. Supp. 20.

122. MORTGAGES—Usury.—The validity of notes representing a debt and interest thereon at the highest legal rate to their maturity is not affected by a provision in the notes for interest after maturity.—Goodale v. Wallace, S. Dak., 103 N. W. Rep. 651.

123. MUNICIPAL CORPORATIONS—Ordinance Affecting Street Improvement.—A city engineer's estimate of the cost of a street improvement held a sufficient compliance with a statute requiring it to be itemized.—Chicago Union Traction Co. v. City of Chicago, Ill., 74 N. E. Rep. 449.

124. MUNICIPAL CORPORATIONS—Street Improvements.—After an improvement is made and the intersections paid for by the city, special assessments cannot be enjoined on the ground that the fund to pay for the street intersections was not available when the improvement was ordered.—Eddy v. City of Omaha, Neb., 103 N. W. Rep. 692.

125. MUNICIPAL CORPORATIONS—Taxing Powers.—No taxing power can be vested in a municipality, nor can a restricted grant of power be expanded, by judicial construction.—Adams v. Ducate, Miss., 38 So. Rep. 497.

126. NEGLIGENCE—Evidence of Other Negligent Acts.—Where, in an action for injuries, the negligent acts relied on are alleged, plaintiff cannot recover on proof of other negligent acts, causing the injury.—Chicago City Ry. Co. v. Bruley, Ill., 74 N. E. Rep. 441.

127. NUISANCE—Abatement of Public Nuisance.—To confer jurisdiction in equity to abate a public nuisance, plaintiff must have suffered special damages, incapable of being measured.—George v. Peckham, Neb., 103 N. W. Rep. 664.

128. PARTIES—Amending to Admit New Parties.—Permitting an additional party to be joined after commencement of the suit is not reversible error, where the defendants objecting do not show that they were prejudiced, and the defendant joined makes no objection.—Jordan v. Greig, Colo., 80 Pac. Rep. 1045.

129. PARTIES — Waiver of Defect. — Defect of parties held not waived because not raised by demurrer or answer.—Peck v. Peck, Colo., 80 Pac. Rep. 1068.

130. PARTNERSHIP — Administrator of Deceased Partner.—Where administrator of deceased partner misapplies the funds in payment of debts of the firm, he and the other partners are liable for the misappropriation.—Hibberd v. Hubbard, Pa., 60 Atl. Rep. 911.

131. PARTNERSHIP—Duties of Partners.—If a partner in the transaction of the partnership is guilty of concealment as to the other partners, and derives a benefit therefrom, he will be treated in equity as a trustee for the firm, and may be compelled to account.—McKinley v. Lynch, W. Va., 51 S. E. Rep. 4.

132. PAYMENT—Joint Indebtedness.—Bonds accepted at a valuation as payment of a joint indebtedness held to constitute payment, sufficient to entitle plaintiff to maintain suit for contribution.—Hill v. Fuller, Mass., 74 N. E. Rep. 361.

133. PLEADING—Action on Accident Insurance Policy.—Plaintiff may plead, subject to liability to attack by motion or demurrer, matter in avoidance of an anticipated defense, and may supplement the same in his reply.—Western Travelers' Acc. Ass'n v. Tomson, Neb., 103 N. W. Rep. 695.

134. PLEDGES—Colorable Sale of Mortgaged Property.—In a suit to redeem real estate from a lien created by a pledge of mortgages thereon, evidence held to show that transfers of the mortgages by the pledgees were not a sale under the terms of the pledge, but were merely colorable.—Jennings v. Wyzanski, Mass., 74 N. E. Rep. 347.

135. PRINCIPAL AND AGENT—Authority of Agent.—The sending out of a soliciting agent held not to render principal liable for acts outside his specified authority.—Jos. Schlitz Brewing Co. v. Grimmon, Nev., 81 Pac. Rep. 43.

136. PRINCIPAL AND AGENT—Construction of Power of Attorney.—A written power of attorney held not to authorize employment of counsel to defend suits, to recover the land after possession obtained, or to institute proceedings to enjoin trespass on the land.—White v. Young, Ga., 51 S. E. Rep. 28.

137. PRINCIPAL AND AGENT—Duty to Ascertain Authority of Agent.—One paying a debt secured by mortgage to a supposed agent of the owner of the mortgage is bound to ascertain the scope of the agent's authority.—Cornish v. Woolverton, Mont., 81 Pac. Rep. 4.

138. PUBLIC LANDS—Effect of Occupancy.—The mere occupancy of public lands by a settler gives him no vested rights therein as against the United States, or a purchaser therefrom.—Le Fevre v. Amonson, Idaho, 81 Pac. Rep. 71.

139. QUIETING TITLE—Possession. — Ownership of vacant property by plaintiff in fee at the time of suing to quiet title held to carry possession, in the absence of actual entry and adverse possession by another.—Mitchell v. Titus, Colo., 80 Pac. Rep. 1042.

140. RAILROADS—Right to Use Street. — An abutter, who has conveyed to a railroad the right to use the street, has no individual right to a mandamus to compel the railroad to remove its structures, but may, as a citizen, enforce the rights of the public.—People v. City of Rock Island, Ill., 74 N. E. Rep. 437.

141. SALES—Consequential Damages.—A purchaser of an article held not entitled to recover consequential damages for breach of warranty that it is safe, where his negligence contributes to the accident.—Razey v. J. B. Colt Co., 94 N. Y. Supp. 59.

142. SALES—Warranty as to Number of Logs.—Where a contract for the sale of logs warranted a certain number, the buyer could not rescind for breach of this warranty; his remedy being by an action for damages.—Hulet v. Achey, Wash., 80 Pac. Rep. 1105.

143. SCHOOLS AND SCHOOL DISTRICTS—Paving Streets.—The board of education of the school district of Omaha may authorize its president to sign a petition for repaving a street in the name of the board.—Eddy v. City of Omaha, Neb., 103 N. W. Rep. 692.

144. SEAMEN—Medical Treatment.—The master of a vessel held not guilty of negligence in furnishing a seaman proper medical treatment for a frost bite.—Johnson v. Holmes, Mass., 74 N. E. Rep. 364.

145. SPECIFIC PERFORMANCE—When Denied.—Equity will not compel specific performance, where the party invoking its aid has not parted with any consideration and no irreparable damage is suffered.—Howes v. Barmon, Idaho, 81 Pac. Rep. 48.

146. STATES—Rules of Legislature. — The Senate may adopt any procedure and change it at any time and without notice, and cannot tie its own hands by establishing unchangeable rules.—French v. State Senate, Cal., 80 Pac. Rep. 1031.

147. STREET RAILROADS—Contributory Negligence of Pedestrian.—In an action for injuries to plaintiff by a street car striking a timber which plaintiff and his companion were carrying, the question of plaintiff's contributory negligence held for the jury.—Chicago City Ry. Co. v. Nelson, Ill., 74 N. E. Rep. 458.

148. STREET RAILROADS—Explosion in Controller Box Prima Facie Negligence.—In an action for injuries to a passenger on a street car, while attempting with others to escape from the car after an explosion in the controller box, the happening of the accident held to establish a *prima facie* case of negligence —Chicago Union Traction Co. v. Newmiller, Ill., 74 N. E. Rep. 410.

149. STREET RAILROADS—Freight Depot as a Nuisance. —The erection of a freight depot and switch yard in a residence neighborhood, across the street from complainant's property, held not a nuisance subject to injunction.— Walther v. Chicago & W. I. R. Co., Ill., 74 N. E. Rep. 461.

150. STREET RAILROADS — Injury to Passenger.—An elevated street railway company held not guilty of negligence in maintaining an open space in the passageway between its cars, and in failing to notify passengers permitted to use the same thereof —Falkins v. Boston Elevated Ry. Co., Mass , 74 N. E. Rep. 338.

151. STREET RAILROADS—Pedestrian on Track.—Though a pedestrian heard the bell of a street car and did not get off the track, the operatives had no right to run into him.—Peterson v. New York City Ry. Co., 94 N. Y. Supp. 22.

152. STREET RAILROADS—Special Interrogatories.—In an action for death of a child in collision with a street car at a crossing, it was improper for the court to submit special interrogatories as to whether the child ran into the car or the car ran into the child.—Chicago City Ry. Co. v. Jordan, Ill., 74 N. E. Rep. 452.

153. STREET RAILROADS—Use of Tracks by Teams.—One driving upon the side of a street has a right to drive upon a street railway track, in order to pass another vehicle standing between the curb and the track.—Goodson v. New York City Ry. Co., 94 N. Y. Supp. 10.

154. TAXATION—Stocks and Bonds.—Loans secured by stocks and bonds are assessable for taxation as solvent credits.—Savings & Loan Soc. v City and County of San Francisco, Cal., 80 Pac. Rep. 1086.

155. TAXATION—Street Railways.—No exemption from municipal taxation of business of street railway held to result from its agreement with the city, preserving its easements in land to be conveyed by it to the city, and granting it the right to construct its railway through certain streets, subject to control of city officers.—Savannah, T. & L. of H. Ry. v. City of Savannah, U. S. S. C., 25 Sup. Ct. Rep. 690.

156. TAXATION—Tax Deeds.—The execution of a tax deed on vacant property is insufficient to give the grantee constructive possession.—Mitchell v. Titus, Colo., 80 Pac. Rep. 1042.

157. TENANCY IN COMMON—Water Rights.—An appropriation of the water of a stream by landowners held not to invest them with joint ownership of water appropriated.—City of Telluride v. Davis, Colo., 80 Pac Rep. 1051.

158. TRESPASS—Cutting Timber.—In trespass for cutting timber, any question as to the propriety of a cross-complaint held waived.—Power v. Fairbanks, Cal., 80 Pac. Rep. 1075.

159. TRIAL—Assumption of Risk.—The showing necessary to support a motion for a nonsuit or a verdict for defendant, on the ground of assumption of risk, in an action for injuries, determined.—Stevens v. United Gas & Electric Co., N. H., 60 Atl. Rep. 848.

160. TRIAL—Counsel Reading Law to Jury.—Allowing counsel to read law in the presence of the jury held not ground for reversal, in the absence of prejudice.—Williams v. Spokane Falls & N. Ry. Co., Wash., 80 Pac. Rep. 1100.

161. TRIAL—Harmless Error.—Where a saloon keeper and his landlord were jointly sued for causing the death of the husband and father of plaintiffs by liquor sold to him, it was not error for the court, in the absence of a request, to omit to submit a form for a several verdict.—Triggs v. McIntyre, Ill., 74 N. E. Rep. 400.

162. TRIAL—Wording of Instruction.—Language used by the supreme court in discussing the facts of a case is often inappropriate for use by the judge of a trial court in instructing a jury.—Atlanta & W. P. R. Co. v. Hudson, Ga., 51 S. E. Rep. 29.

163. TROVER AND CONVERSION—Title to Maintain.—Wrongful possession of personal property held sufficient to enable the party enjoying it to maintain trover against a mere stranger.—Stitt v. Namakan Lumber Co., Minn., 103 N. W. Rep. 707.

164. TRUSTS—Impairment of Fund.—Assent of life tenant to impairment of trust fund held not to estop her from claiming her rights, where the trustee is required by the court to make good the deficiency.—Bennett v. Pierce, Mass , 74 N. E. Rep. 360.

165. TRUSTS—Payment of Annuities from Corpus of Estate.—Dividends on stocks and bonds pledged with creditors of testator held not income, from which annuities could be paid by testamentary trustees.—Skinner v. Taft, Mich., 103 N. W. Rep. 702.

166. TRUSTS—Rights as Affected by Laches.—Beneficiary of an express trust held estopped from asserting any claim to the trust property by laches and failure to comply with the agreement creating the trust.—Sawyer v. Cook, Mass., 74 N. E. Rep. 356

167. TRUSTS—Substituted Trustees.—Substituted trustees held bound to cause an impairment of principal and accrued interest on deficiency chargeable against their predecessor to be made good.—Bennett v. Pierce, Mass., 74 N. E. Rep. 360.

168. UNITED STATES—Use of Article Patented by Government Employee. — Use by United States of device patented by a government employee, with understanding that compensation would be made, held not to give a contract right to such compensation, where demand was made after 14 years.—Harley v. United States, U. S. S. C., 25 Sup. Ct. Rep. 634.

169. WATERS AND WATER COURSES — Diversion of Stream.—In an action by a mill-owner to enjoin diversion of water of a stream, plaintiff's right to use of water held not limited to periods of year during which flow was sufficient to operate his mill.—City of Telluride v. Blair, Colo., 80 Pac. Rep. 1053.

170. WILLS—Suits by Legatees.—The right of a legatee to whom a specific demand has been given to sue thereon is not defeated by the possibility that the funeral expenses of the testator and the cost of the probate of his will are unpaid.—Patton v. Pinkston, Miss., 38 So. Rep. 500.

171. WILLS—Testamentary Capacity.—The reasonableness of a codicil in reference to the amount of testator's property and the situation of his relatives held to be considered on the question of want of testamentary capacity and undue influence.—French v. French, Ill., 74 N. E. Rep. 403.

172. WITNESSES—Account Stated.—In an action on an account stated, plaintiff held entitled to cross-examine defendant with reference to accounts contained in a book, a portion of which had been offered in evidence by defendant on direct examination.—Devencenzi v. Cassinelli, Nev., 81 Pac. Rep. 41.

173. WITNESSES—Impeachment.—In the cross-examination of a witness for the purpose of impeachment by contradiction, a paper purporting to contain statements made by the witness contradicting the testimony held properly excluded.—Jacobs v. Boston Elevated Ry. Co., Mass., 74 N. E. Rep. 349.

174. WITNESSES—Refreshing Memory from Memorandum.—A witness should not be allowed to refresh his memory from a memorandum which he did not make or see made, and which was not read by him at or about the time the transaction was fresh in his memory.—Emanuel v. Maryland Casualty Co., 94 N. Y. Supp. 36.